

<p>Page 106</p> <p>1 ALAN JOHNSON</p> <p>2 A. I don't believe so.</p> <p>3 Q. Do you have any information at all to</p> <p>4 support the statement that throughout this period,</p> <p>5 Mr. Dondero received loans in lieu of additional</p> <p>6 current compensation other than what Mr. Dondero</p> <p>7 specifically told you?</p> <p>8 A. For him specifically, it's relying on</p> <p>9 what Mr. Dondero said.</p> <p>10 Q. Okay.</p> <p>11 You haven't seen any documents that</p> <p>12 support that statement, do you – did you?</p> <p>13 A. I have not – I have not seen any</p> <p>14 documents, no.</p> <p>15 Q. Would your opinions change if you</p> <p>16 learned that for at least the 11 years prior to</p> <p>17 the bankruptcy filing, Mr. Dondero never received</p> <p>18 a single loan in lieu of compensation?</p> <p>19 A. I'm – I don't understand the</p> <p>20 question. I'm sorry.</p> <p>21 Q. This is the first paragraph of your</p> <p>22 expert report that we're looking at, right?</p> <p>23 What if I told you that the sentence</p> <p>24 "Throughout this period, he received loans in lieu</p> <p>25 of additional current compensation" was false at</p>	<p>Page 107</p> <p>1 ALAN JOHNSON</p> <p>2 least going back as far as 2008, would you want to</p> <p>3 amend your report in any way?</p> <p>4 A. Well, then the sentence wouldn't be</p> <p>5 true if the loans weren't a form of deferred</p> <p>6 compensation.</p> <p>7 So if the facts changed, then the</p> <p>8 report would need to be changed.</p> <p>9 Q. So let me state it a different way.</p> <p>10 Would your opinions change if you</p> <p>11 assume that in the 11 years prior to the</p> <p>12 bankruptcy filing Highland never forgave any loan</p> <p>13 in whole or in part that it had extended to</p> <p>14 Mr. Dondero.</p> <p>15 MR. AIGEN: Objection, form.</p> <p>16 A. No, I don't – I don't think that – I</p> <p>17 don't think that sentence would change that, no.</p> <p>18 Q. Okay.</p> <p>19 I'm not talking about the sentence</p> <p>20 itself, but if I could prove to you today that</p> <p>21 there's no written record of Highland ever</p> <p>22 forgiving a loan to Mr. Dondero, would that have</p> <p>23 an impact at all on your opinions?</p> <p>24 A. I don't think the written record would</p> <p>25 change my opinion. I think he – he had stated to</p>
<p>Page 108</p> <p>1 ALAN JOHNSON</p> <p>2 me that the – the – that a lot of these loans</p> <p>3 were made as a form of deferred compensation with</p> <p>4 the intent to be forgiven at some point in the</p> <p>5 future.</p> <p>6 Q. All right. I'm going to ask you to</p> <p>7 assume the following facts: For the 11 years</p> <p>8 prior to the petition date, other than the three</p> <p>9 loans that were outstanding as of the petition</p> <p>10 date, Mr. Dondero received three loans from</p> <p>11 Highland. Okay?</p> <p>12 So that's assumption No. 1, that</p> <p>13 between 2008 and 2019, Mr. Dondero received three</p> <p>14 loans from Highland.</p> <p>15 Assumption No. 2, that Mr. Dondero</p> <p>16 paid Highland all principal and interest due under</p> <p>17 all three loans.</p> <p>18 Assumption No. 3: The last of those</p> <p>19 three loans was taken out in January 2018 and was</p> <p>20 paid back in full plus interest in December 2019.</p> <p>21 The next assumption: Mr. Dondero has</p> <p>22 testified that any loan that Highland actually</p> <p>23 forgave would be described in Highland's audited</p> <p>24 financial statements and that in those financial</p> <p>25 statements going back to 2008, there's no</p>	<p>Page 109</p> <p>1 ALAN JOHNSON</p> <p>2 description of any loan ever being given to</p> <p>3 Mr. Dondero that was forgiven in whole or in part.</p> <p>4 Do you remember all those assumptions?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay.</p> <p>7 If you assume that each of those</p> <p>8 assumptions is, in fact, true, would you have any</p> <p>9 basis at all to conclude that Mr. Dondero received</p> <p>10 loans in lieu of additional compensation in the</p> <p>11 decade before Highland filed for bankruptcy?</p> <p>12 MR. AIGEN: Objection, form.</p> <p>13 A. Well, in trying to answer the</p> <p>14 question, the – I think a lot of the loans here,</p> <p>15 as I recall, were for different entities and</p> <p>16 different, you know, amounts and situations.</p> <p>17 So if – if the – either hypothetical</p> <p>18 or the assumptions we're making here, that the</p> <p>19 loans eventually were not forgiven, I don't know</p> <p>20 if the – they were intended to be forgiven and</p> <p>21 just weren't or we're talking about other loans</p> <p>22 that are outside the three that you – that you</p> <p>23 mentioned.</p> <p>24 Q. Is it fair to say that neither</p> <p>25 Mr. Dondero nor the Stinson firm ever shared with</p>

<p>Page 110</p> <p>1 ALAN JOHNSON</p> <p>2 you the fact that Mr. Dondero had received three</p> <p>3 loans that are not the subject of this litigation?</p> <p>4 A. I was aware that I believe there were</p> <p>5 loans that were not subject to litigation that had</p> <p>6 been paid off or other types of things. I was</p> <p>7 aware of that.</p> <p>8 Q. How did you learn that?</p> <p>9 A. I think I've seen materials that</p> <p>10 listed loans that showed principals paid off and</p> <p>11 so forth, but I think I've been – I know they</p> <p>12 were loans – I believe I recall that they were</p> <p>13 loans outside of what's being disputed.</p> <p>14 Q. I'm sorry.</p> <p>15 A. No, I was done. I'm sorry.</p> <p>16 Q. Did you ever discuss that with</p> <p>17 Mr. Dondero?</p> <p>18 A. I did not.</p> <p>19 Q. Do you have any knowledge as to why he</p> <p>20 paid back some loans and others were supposed to</p> <p>21 be treated as compensation?</p> <p>22 A. I do not know.</p> <p>23 Q. Is there any reason you didn't</p> <p>24 disclose in your report that Mr. Dondero had</p> <p>25 received loans that he had paid back?</p>	<p>Page 111</p> <p>1 ALAN JOHNSON</p> <p>2 A. I didn't think it was relevant.</p> <p>3 Q. Did you ever ask Mr. Dondero how he</p> <p>4 reconciled the payment of principal and interest</p> <p>5 due on the notes prior to the petition date but</p> <p>6 his treatment of the notes pursuant to the</p> <p>7 agreement that's been described to you?</p> <p>8 A. I did not.</p> <p>9 Q. Are you curious at all as to why he</p> <p>10 paid off some of the notes but not others?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. Yeah, I'm probably curious. It's</p> <p>13 convoluted enough, I'm a curious person, so yeah,</p> <p>14 I'd probably be curious to understand all the ins</p> <p>15 and outs.</p> <p>16 Q. Did it cause you any discomfort that</p> <p>17 Mr. Dondero paid certain loans off in full but the</p> <p>18 only loans that he didn't pay off in full were the</p> <p>19 loans that existed as of the petition date?</p> <p>20 MR. AIGEN: Objection, form.</p> <p>21 A. Well, isn't that by definition true?</p> <p>22 If they've already been paid off, they couldn't</p> <p>23 exist as of the petition date, right?</p> <p>24 Isn't that just – am I missing</p> <p>25 something?</p>
<p>Page 112</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Well, you told me that, from the</p> <p>3 review of the documents, you understood that there</p> <p>4 were loans that Mr. Dondero had taken out that had</p> <p>5 been paid off in full. Is that right?</p> <p>6 A. Yes, I recall that I was aware that</p> <p>7 there were loans that had been paid off. I was</p> <p>8 aware of that.</p> <p>9 Q. And so paying back the loans is</p> <p>10 certainly not – would you agree with me that if</p> <p>11 he – that if he was paying back the loans, then</p> <p>12 he didn't receive the loans in lieu of additional</p> <p>13 current compensation?</p> <p>14 A. Yeah, when I wrote the report, maybe I</p> <p>15 should have parsed out that, but I think I was</p> <p>16 focusing on that there were loans that were</p> <p>17 deferred compensation.</p> <p>18 I guess what we're saying is there may</p> <p>19 have been other loans that were not deferred</p> <p>20 compensation. They were more run-of-the-mill</p> <p>21 obligations, so if that's the point we're making,</p> <p>22 but I think what I was trying to address here,</p> <p>23 that there were loans made that were intended to</p> <p>24 be deferred compensation.</p> <p>25 Q. And the only basis that you have for</p>	<p>Page 113</p> <p>1 ALAN JOHNSON</p> <p>2 that statement is what Mr. Dondero told you,</p> <p>3 correct?</p> <p>4 A. For himself, that is true, and then</p> <p>5 the other four executives provided a little bit of</p> <p>6 history on the use of such loans within the</p> <p>7 company.</p> <p>8 Q. And it didn't concern you at all that</p> <p>9 certain loans were paid back and that certain</p> <p>10 loans, according to Mr. Dondero, are subject to</p> <p>11 this agreement that he entered into with the</p> <p>12 company?</p> <p>13 A. I think that would be something that</p> <p>14 if – certainly, I would have asked him about, but</p> <p>15 that certainly would be something to – to discuss</p> <p>16 with him, yes.</p> <p>17 Q. But you haven't done that as of today,</p> <p>18 correct?</p> <p>19 A. I have not.</p> <p>20 Q. And nobody has explained to you why he</p> <p>21 paid back certain loans but certain other loans</p> <p>22 were supposed to be provided in lieu of additional</p> <p>23 current compensation, right?</p> <p>24 A. That's right.</p> <p>25 Q. Okay.</p>

<p>Page 114</p> <p>1 ALAN JOHNSON</p> <p>2 The next sentence in this paragraph</p> <p>3 says – and I just want to make sure that I'm</p> <p>4 quoting this correctly – "Consistent with company</p> <p>5 practice, the loans were considered a form of</p> <p>6 deferred compensation that could be realized over</p> <p>7 time as the loans were forgiven and the income</p> <p>8 recognized by the individuals."</p> <p>9 Have I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Why did you include that sentence in</p> <p>12 your report?</p> <p>13 A. Well, from talking to the four former</p> <p>14 executives and himself, he described a company</p> <p>15 practice of having using loans as deferred</p> <p>16 compensation. In his words, it was called</p> <p>17 "delayed gratification."</p> <p>18 So you had these loans that were</p> <p>19 intended to provide capital to invest in the</p> <p>20 business, and they would eventually be forgiven</p> <p>21 and then the income would be recognized by the</p> <p>22 individual.</p> <p>23 So the four of them and himself had</p> <p>24 described a company practice of using these loans</p> <p>25 to – you know, as a form of deferred</p>	<p>Page 115</p> <p>1 ALAN JOHNSON</p> <p>2 compensation.</p> <p>3 Q. And that practice is very important to</p> <p>4 your opinions, right?</p> <p>5 A. Well, it – it – as I said earlier,</p> <p>6 my opinion is about the use of loans in private</p> <p>7 financial services companies and what his market</p> <p>8 value, his compensation, would be.</p> <p>9 Q. But actually, the practice that was</p> <p>10 described to you by Mr. Dondero and these four</p> <p>11 former employees, you relied upon to determine</p> <p>12 that Highland had a practice and that the</p> <p>13 forgiveness of the loans in this instance would be</p> <p>14 consistent with that practice. Is that right?</p> <p>15 A. That's right.</p> <p>16 MR. MORRIS: Let's turn to page 16 of</p> <p>17 the report.</p> <p>18 Q. This is your conclusion, right?</p> <p>19 A. Yes.</p> <p>20 Q. And in the middle, it says,</p> <p>21 "Additionally, it is my opinion that the loans</p> <p>22 provided to Mr. Dondero should be considered</p> <p>23 potential deferred compensation as they were</p> <p>24 similar to loans given to other professionals at</p> <p>25 the firm."</p>
<p>Page 116</p> <p>1 ALAN JOHNSON</p> <p>2 Have I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. And is the information that supports</p> <p>5 your opinion in that sentence based solely on what</p> <p>6 was told to you by Mr. Dondero and the four</p> <p>7 individuals?</p> <p>8 A. Yes.</p> <p>9 Q. You have no documents that support</p> <p>10 that sentence. Is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And I assume, as a dutiful expert, you</p> <p>13 asked for any documentation that might concern or</p> <p>14 relate to the prior practice. Is that right?</p> <p>15 A. That's right.</p> <p>16 Q. Just looking at the sentence itself,</p> <p>17 what do you mean by the loans being "similar to</p> <p>18 loans given to other professionals at the firm"?</p> <p>19 A. Just that they would be forgiven. I</p> <p>20 mean that deferred compensation at some point</p> <p>21 would be – would be forgiven.</p> <p>22 Q. They're certainly not similar in</p> <p>23 amount. Is that fair?</p> <p>24 A. No. They're much larger.</p> <p>25 Q. In fact, I think you testified that</p>	<p>Page 117</p> <p>1 ALAN JOHNSON</p> <p>2 the largest loan you have been informed has ever</p> <p>3 been forgiven was \$500,000 or thereabouts.</p> <p>4 Do I have that right?</p> <p>5 A. That's what I'm aware of, yes.</p> <p>6 Q. And Mr. Dondero has told you that</p> <p>7 there's 40 to \$50 million in loans that he</p> <p>8 contends are the subject of an agreement?</p> <p>9 A. I don't know if he told me the 40 to</p> <p>10 50 million, but I think I've seen that in various</p> <p>11 spreadsheets or numbers. That's the number I</p> <p>12 believe – at least that I recall that's in</p> <p>13 dispute.</p> <p>14 Q. So is it fair to say that the</p> <p>15 aggregate value of the loans that are the subject</p> <p>16 to the agreement that Mr. Dondero described for</p> <p>17 you concern loans that are 80 to 100 times larger</p> <p>18 than the largest loan you have been told has ever</p> <p>19 been forgiven by Highland?</p> <p>20 A. It is much – it is much large than</p> <p>21 any loan I'm familiar with, yes.</p> <p>22 Q. Did anybody ever tell you that</p> <p>23 Highland had ever forgiven a loan made to a</p> <p>24 corporate affiliate?</p> <p>25 A. That, I'm not aware of, no.</p>

<p>Page 118</p> <p>1 ALAN JOHNSON</p> <p>2 Q. So there's nothing similar about the</p> <p>3 loans that were given to the corporate affiliates</p> <p>4 as compared to the loans that were forgiven for</p> <p>5 the four individuals you spoke with. Is that</p> <p>6 correct?</p> <p>7 MR. AIGEN: Objection, form.</p> <p>8 MR. MORRIS: Withdrawn. That's a fair</p> <p>9 objection.</p> <p>10 Q. The four individuals that you spoke</p> <p>11 with, they described for you loans that had been</p> <p>12 given to individuals. Is that right?</p> <p>13 A. Yes.</p> <p>14 Q. But the loan documents that you saw</p> <p>15 that had those schedules of loans that were being</p> <p>16 rolled up, all of those loans related to corporate</p> <p>17 entities. Isn't that right?</p> <p>18 A. No. I think I mentioned before, I</p> <p>19 didn't really focus on that. I looked at the</p> <p>20 loans themselves. So I did not actually focus on</p> <p>21 the corporate entities in my perusal of those</p> <p>22 documents.</p> <p>23 Q. Would there be any difference in your</p> <p>24 expert opinion as to whether or not the loan was</p> <p>25 given to an individual or given to a corporate</p>	<p>Page 119</p> <p>1 ALAN JOHNSON</p> <p>2 entity?</p> <p>3 A. Usually it would, but in these closely</p> <p>4 held corporations, often they're synonymous, so it</p> <p>5 really would depend on the circumstances.</p> <p>6 Q. Let's -- let's spend some time looking</p> <p>7 at the documentation that we have that's been</p> <p>8 produced in this case concerning this company</p> <p>9 practice.</p> <p>10 MR. MORRIS: And so I'd like to put up</p> <p>11 on the screen what's been marked as --</p> <p>12 premarked as Exhibit 63, which is Highland's</p> <p>13 2008 audited financial statements.</p> <p>14 (Exhibit 63, Highland's 2008 audited</p> <p>15 financial statements, was marked for</p> <p>16 identification at this time.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. And I'd like you, as we go through</p> <p>19 this exercise, Mr. Johnson, to take notes of all</p> <p>20 of the loans that we're going to discuss. There</p> <p>21 won't be many, but do you have a pen and a piece</p> <p>22 of paper with you?</p> <p>23 A. I do.</p> <p>24 Q. Yeah, can I trouble you to just write</p> <p>25 down, you know, "2008 financial statements," and</p>
<p>Page 120</p> <p>1 ALAN JOHNSON</p> <p>2 we're just going to do this for every year through</p> <p>3 2018, so you can have a full understanding of the</p> <p>4 loans that Highland included in its audited</p> <p>5 financial statements.</p> <p>6 I assume that you did not rely on this</p> <p>7 document for your opinions because you didn't have</p> <p>8 it at the time that you prepared your report;</p> <p>9 correct?</p> <p>10 A. That's right.</p> <p>11 Q. Okay.</p> <p>12 MR. MORRIS: And if we could turn to</p> <p>13 page 38, please.</p> <p>14 I'm sorry, not PDF 38. I'm referring</p> <p>15 to the document, No. 38. It shouldn't be</p> <p>16 too far.</p> <p>17 This is going to be a little painful</p> <p>18 on the Zoom, Mr. Johnson. I ask for your</p> <p>19 patience.</p> <p>20 All right. Stop right there.</p> <p>21 Q. Do you see that this portion of the</p> <p>22 Highland's 2008 audited financial statements has a</p> <p>23 section called "Notes to Affiliates"?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>	<p>Page 121</p> <p>1 ALAN JOHNSON</p> <p>2 And in paragraph 1, it says that the</p> <p>3 partnership issued a promissory note of \$400,000</p> <p>4 to an employee.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And at the end of the paragraph, it</p> <p>8 says that that promissory note was forgiven.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So we can write down that in 2008,</p> <p>12 Highland forgave a promissory note to an employee</p> <p>13 in the amount of \$400,000.</p> <p>14 A. Okay.</p> <p>15 Q. The next paragraph, there's a</p> <p>16 reference to an August 1 promissory note in the</p> <p>17 amount of \$500,000.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And at the end of the year, that</p> <p>21 promissory note was still outstanding.</p> <p>22 Do you see that?</p> <p>23 A. Okay.</p> <p>24 Q. So No. 1 is 7/31/06, \$400,000</p> <p>25 forgiven.</p>

<p>Page 122</p> <p>1 ALAN JOHNSON</p> <p>2 No. 2 is 8/1/08, \$500,000 outstanding,</p> <p>3 right?</p> <p>4 No. 3, do you see there's a reference</p> <p>5 to two loans that were made in 2 – on May 21,</p> <p>6 2007, in the amount of a million dollars each?</p> <p>7 A. Okay.</p> <p>8 Q. And if you read further, it says that</p> <p>9 during 2008, 30 percent of the outstanding</p> <p>10 principal was owed – was forgiven, leaving</p> <p>11 \$700,000 due and paying.</p> <p>12 So there's two loans that were</p> <p>13 forgiven in the amount of \$300,000 each.</p> <p>14 Do I have that right?</p> <p>15 A. Okay.</p> <p>16 Q. Then, in the next paragraph, we've got</p> <p>17 August 20th, 2008, and there's \$330,000 loan which</p> <p>18 is all outstanding at year end.</p> <p>19 Do I have that right?</p> <p>20 A. Okay.</p> <p>21 Q. And the next paragraph, August 1</p> <p>22 there's a \$500,000 loan that was given to an</p> <p>23 employee that was all outstanding at year end.</p> <p>24 Do I have that right?</p> <p>25 A. Okay.</p>	<p>Page 123</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And then on October 15th, there's</p> <p>3 another \$500,000 loan made to another employee</p> <p>4 that was outstanding at year end.</p> <p>5 Do I have that right?</p> <p>6 A. Okay.</p> <p>7 Q. So would you agree with me that in</p> <p>8 fiscal year 2008, Highland forgave one loan to an</p> <p>9 employee in the amount of \$400,000 and forgave in</p> <p>10 part loans to two other employees in the amount of</p> <p>11 \$300,000 each?</p> <p>12 A. Okay.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Let's go to Exhibit</p> <p>15 No. 64.</p> <p>16 (Exhibit 64, Highland's audited</p> <p>17 financial statements for December 31, 2009,</p> <p>18 was marked for identification at this time.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And do you see that this is Highland's</p> <p>21 audited financial statements for December 31,</p> <p>22 2009?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 MR. MORRIS: Can we go to page 33 of</p>
<p>Page 124</p> <p>1 ALAN JOHNSON</p> <p>2 the document?</p> <p>3 There you go. All right.</p> <p>4 Q. The first one that's described is an</p> <p>5 August 20th, 2008 loan in the amount of \$300,000,</p> <p>6 and that seems to correspond with the fourth loan</p> <p>7 that we looked at in 2008 because it's also a loan</p> <p>8 dated August 20, 2008 in the amount of \$330,000.</p> <p>9 Do you see that?</p> <p>10 A. I'm sorry, I lost my train.</p> <p>11 Where is it now?</p> <p>12 Q. So in the very first paragraph, under</p> <p>13 "Affiliated Transactions"?</p> <p>14 A. Yeah, okay, I see it now. I'm sorry.</p> <p>15 Q. Okay.</p> <p>16 This loan, is it fair, if you take a</p> <p>17 look at your notes, this loan corresponds with</p> <p>18 the – with the loan that was described in the</p> <p>19 2008 financials.</p> <p>20 Do you have that as the fourth item on</p> <p>21 your list, if you look at your list?</p> <p>22 A. My list is going to be incomplete here</p> <p>23 in terms of going through this, but I'm trying to</p> <p>24 take notes here, but I believe what you say is</p> <p>25 true.</p>	<p>Page 125</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 And you can see that the principal</p> <p>4 amount of the note had been reduced by year end.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 So there's no evidence that this</p> <p>9 particular note was forgiven in whole or in part</p> <p>10 in 2009, correct?</p> <p>11 A. That's right.</p> <p>12 Q. And if we look at the next paragraph,</p> <p>13 there's a reference to an August 1, 2008 note in</p> <p>14 the amount of \$500,000.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And that entire amount of principal</p> <p>18 was still outstanding at the end of the year.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So there's no evidence that this note</p> <p>22 was forgiven in whole or in part in 2009, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And there's no other – we can go</p> <p>25 through the rest of the section, but there's no</p>



<p>Page 126</p> <p>1 ALAN JOHNSON</p> <p>2 other notes of any kind that are referred to in –</p> <p>3 in this section of the audited financials.</p> <p>4 If we can just scroll down to the end</p> <p>5 of the affiliated transaction sections, I mean, I</p> <p>6 will tell you that they put the employees up top.</p> <p>7 So is it fair to say based on just</p> <p>8 what I've shown you that you don't see any</p> <p>9 evidence that Highland forgave any notes to any</p> <p>10 employees in 2009?</p> <p>11 A. I think that's right.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Let's go to 2010,</p> <p>14 Exhibit 65, please.</p> <p>15 (Exhibit 65, Highland's audited</p> <p>16 financial statements for December 31, 2010,</p> <p>17 was marked for identification at this time.)</p> <p>18 MR. MORRIS: And if we can turn to</p> <p>19 page 33.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. So if we look at the first paragraph,</p> <p>22 do you see there's still a reference to the</p> <p>23 \$330,000 note?</p> <p>24 A. Yep.</p> <p>25 Q. Okay.</p>	<p>Page 127</p> <p>1 ALAN JOHNSON</p> <p>2 It's interesting, in the</p> <p>3 next-to-the-last sentence – let's see if I'm</p> <p>4 reading this correctly – it says, "The note has</p> <p>5 specific forgiveness provisions of principal and</p> <p>6 interest prior to maturity if certain milestones'</p> <p>7 dates are obtained."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So based on that, would you conclude</p> <p>11 in your experience that the note actually had</p> <p>12 specific provisions concerning forgiveness?</p> <p>13 A. Yes, that's what that implies.</p> <p>14 Q. And based on your experience, would</p> <p>15 you understand that this note was really a form of</p> <p>16 retention note whereby it would be forgiven if the</p> <p>17 person were still employed at the time of the</p> <p>18 note's – at the end of the note's term?</p> <p>19 A. It's hard to tell. Milestones could</p> <p>20 be performance or it – it could go either way,</p> <p>21 but there's certain provisions that have been</p> <p>22 documented that it will be forgiven either through</p> <p>23 time or performance.</p> <p>24 Q. Well, it doesn't refer to milestones.</p> <p>25 Instead, it refers to milestone dates.</p>
<p>Page 128</p> <p>1 ALAN JOHNSON</p> <p>2 Do you see that?</p> <p>3 A. I – I think you're right, just I've</p> <p>4 never seen the word "milestone dates" used, so I'm</p> <p>5 not quite sure what they were trying to say, but I</p> <p>6 think you're probably right.</p> <p>7 Q. Okay.</p> <p>8 But in any event, you would agree with</p> <p>9 me that there's nothing in this paragraph that</p> <p>10 suggests that Highland forgave that loan in whole</p> <p>11 or in part in 2010, correct?</p> <p>12 A. That's right.</p> <p>13 Q. And if we scroll down through the rest</p> <p>14 of this section, I think – I hope you'll agree</p> <p>15 with me that there's no other reference to any</p> <p>16 other loans given to any employee in 2010?</p> <p>17 A. I think that's right.</p> <p>18 MR. MORRIS: Okay. Let's go to</p> <p>19 Exhibit 66 –</p> <p>20 Q. Oh, I'm going to tell you, I'm</p> <p>21 skipping, actually, because there's only so much</p> <p>22 pain I'm willing to endure.</p> <p>23 We're going to skip 2011, '12, and</p> <p>24 '13, and I'm going to represent to you that</p> <p>25 there's absolutely nothing in any of those audited</p>	<p>Page 129</p> <p>1 ALAN JOHNSON</p> <p>2 financial statements that pertains or concerns any</p> <p>3 loans given to any employee.</p> <p>4 And you can – you can – not accept</p> <p>5 my representation, but take that as an assumption</p> <p>6 you should make, that there's no reference to any</p> <p>7 loan to any employee in those years.</p> <p>8 MR. MORRIS: Can we go to Exhibit 66</p> <p>9 please.</p> <p>10 MS. CANTY: It's 69, 2014.</p> <p>11 MR. MORRIS: Okay. Yep, it's up on</p> <p>12 the screen.</p> <p>13 (Exhibit 69, Highland's audited</p> <p>14 financial statements for December 31, 2014,</p> <p>15 was marked for identification at this time.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. So do you see that this is the 2014</p> <p>18 audited financial reports for Highland Capital</p> <p>19 Management?</p> <p>20 A. Yes.</p> <p>21 Q. And you may or may not have seen this</p> <p>22 report. Is that right?</p> <p>23 A. I think I got it.</p> <p>24 Q. When you reviewed the audited</p> <p>25 financial statements that you were given, did you</p>

<p>Page 130</p> <p>1 ALAN JOHNSON</p> <p>2 review them to try to learn any more information</p> <p>3 about the practice that was described to you</p> <p>4 whereby Highland would forgive loans to employees</p> <p>5 in whole or in part?</p> <p>6 A. I had just received these. I didn't</p> <p>7 have time to go through it.</p> <p>8 MR. MORRIS: Let's go to page 27,</p> <p>9 please.</p> <p>10 Q. Okay. Do you see that there's a</p> <p>11 section called "Affiliated Transactions" again</p> <p>12 that begins at the bottom of page 27?</p> <p>13 A. Okay.</p> <p>14 Q. And do you see that the first</p> <p>15 paragraph describes a loan between Highland and</p> <p>16 Highland Capital Management Fund Advisors?</p> <p>17 A. Yes.</p> <p>18 Q. And does it appear to you that the</p> <p>19 loan that was granted in 2014 was fully</p> <p>20 outstanding at year end?</p> <p>21 A. Yes.</p> <p>22 Q. And there's no reference in that</p> <p>23 paragraph to any portion of the loan having been</p> <p>24 forgiven, correct?</p> <p>25 A. That's right.</p>	<p>Page 131</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And then the next paragraph refers to</p> <p>3 another loan between the same parties.</p> <p>4 Do I have that right?</p> <p>5 A. Yes.</p> <p>6 Q. And there's nothing in that paragraph</p> <p>7 that suggests that that loan was forgiven in whole</p> <p>8 or in part at any time in 2014, correct?</p> <p>9 A. That's right.</p> <p>10 MR. MORRIS: And let's go to the next</p> <p>11 page, please.</p> <p>12 Q. Do you see that there's a reference to</p> <p>13 a note in the first paragraph between Highland and</p> <p>14 NexPoint that was issued in 2014?</p> <p>15 A. Yes.</p> <p>16 Q. And there's nothing in that paragraph</p> <p>17 that suggests the note was forgiven in whole or in</p> <p>18 part at any time in 2014, correct?</p> <p>19 A. Yes.</p> <p>20 Q. In fact, the entirety of the principal</p> <p>21 amount plus interest was still due at year end,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. The next paragraph, do you see it</p> <p>25 refers to a note between Highland and an entity</p>
<p>Page 132</p> <p>1 ALAN JOHNSON</p> <p>2 called "HCRE"?</p> <p>3 A. Yes.</p> <p>4 Q. And there's nothing in that paragraph</p> <p>5 that suggests that the note or the loan was</p> <p>6 forgiven in whole or in part at any time in 2014,</p> <p>7 correct?</p> <p>8 A. That's right.</p> <p>9 Q. There was a modest payment made of</p> <p>10 principal during the year.</p> <p>11 Do I have that right? Is my</p> <p>12 interpretation a fair interpretation?</p> <p>13 A. That's right.</p> <p>14 Q. And then the last section of this, the</p> <p>15 last paragraph of this section refers to a note</p> <p>16 between Highland and an entity called "Highland</p> <p>17 Capital Management Services, Inc."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And there's nothing in that paragraph</p> <p>21 that suggests that any portion of that loan was</p> <p>22 forgiven in whole or in part in 2014, correct?</p> <p>23 A. That's right.</p> <p>24 Q. And, in fact, the entire principal</p> <p>25 balance plus interest was due at year end. Is</p>	<p>Page 133</p> <p>1 ALAN JOHNSON</p> <p>2 that fair?</p> <p>3 A. Yes.</p> <p>4 MR. MORRIS: Okay. Let's go to 2015,</p> <p>5 please.</p> <p>6 What exhibit are we on?</p> <p>7 MS. CANTY: 70 is 2015.</p> <p>8 MR. MORRIS: I see what we did. Okay.</p> <p>9 (Exhibit 70, Highland's audited</p> <p>10 financial statements for December 31, 2015,</p> <p>11 was marked for identification at this time.)</p> <p>12 MR. MORRIS: If we can just go to the</p> <p>13 first page, please.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Do you see that this is the first page</p> <p>16 of the audited financial statements for the year</p> <p>17 ending 2015 for Highland?</p> <p>18 A. Yes.</p> <p>19 Q. And you're not relying on this</p> <p>20 document for any of your opinions, correct?</p> <p>21 A. That's right.</p> <p>22 MR. MORRIS: Can we turn to page 27,</p> <p>23 please – I messed this up, sorry.</p> <p>24 Keep going down. Keep going. Keep</p> <p>25 going.</p>

<p>Page 134</p> <p>1 ALAN JOHNSON</p> <p>2 Okay. Stop right there.</p> <p>3 Can we just scroll down so we can see</p> <p>4 what page number we're on?</p> <p>5 Q. All right. Do you see we're on</p> <p>6 page 29, Mr. Johnson?</p> <p>7 A. Yes.</p> <p>8 MR. MORRIS: Can we go to the top of</p> <p>9 the affiliates transaction.</p> <p>10 Q. Do you see that there's a reference to</p> <p>11 Highland Capital Management Fund Advisors?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 And do you see there's a reference to</p> <p>15 \$6.1 million principal and interest being due at</p> <p>16 the year end?</p> <p>17 A. Yes.</p> <p>18 Q. And then there's a sentence that says,</p> <p>19 "The partnership will not demand payment on</p> <p>20 amounts owed prior to May 31, 2017."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Were you aware that Highland had</p> <p>24 agreed with its affiliate not to make a demand on</p> <p>25 the payments for a period of time?</p>	<p>Page 135</p> <p>1 ALAN JOHNSON</p> <p>2 A. I wasn't aware of that.</p> <p>3 Q. Do you see the last paragraph – the</p> <p>4 last sentence of the paragraph says, "A fair value</p> <p>5 of the partnership's outstanding notes receivable</p> <p>6 approximates the carrying value of the notes</p> <p>7 receivable"?</p> <p>8 A. Yes.</p> <p>9 Q. Do you understand that to mean that</p> <p>10 the fair value of the notes equals to the</p> <p>11 principal face amount of the notes?</p> <p>12 A. The carrying value would include the</p> <p>13 face amount probably and any unpaid interest, but</p> <p>14 yes, it would be the book – the book value, yes.</p> <p>15 Q. And the book value in this case equals</p> <p>16 the unpaid principal and interest due on the note,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And so as of this time anyway, the</p> <p>20 fair value of the notes equaled the unpaid</p> <p>21 principal and interest due on the note, correct?</p> <p>22 MR. AIGEN: Objection, form.</p> <p>23 A. Yes. Yes, I think that's right.</p> <p>24 Q. There's nothing in that first</p> <p>25 paragraph that says or suggests that any of the</p>
<p>Page 136</p> <p>1 ALAN JOHNSON</p> <p>2 loans with HCMFA were forgiven in whole or in part</p> <p>3 in 2015, correct?</p> <p>4 A. Right.</p> <p>5 Q. And the next paragraph relates to</p> <p>6 loans with NexPoint Advisors.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 Take your time, but my question is</p> <p>11 whether there's anything in that paragraph that</p> <p>12 states or suggests that any portion of the loans</p> <p>13 between Highland and NexPoint were forgiven in</p> <p>14 whole or in part in 2015?</p> <p>15 A. I think that's right, yes.</p> <p>16 Q. Do you see there was also a statement</p> <p>17 regarding Highland's not demanding payment on the</p> <p>18 notes for a couple of years?</p> <p>19 A. Yes.</p> <p>20 Q. In your experience and based on your</p> <p>21 expertise, can you think of a reason why Highland</p> <p>22 would agree not to make a demand on promissory</p> <p>23 notes?</p> <p>24 A. It could be the financial condition of</p> <p>25 the borrower that was part of the negotiation</p>	<p>Page 137</p> <p>1 ALAN JOHNSON</p> <p>2 putting the loans together. It would – it</p> <p>3 generally have something to do with the financial</p> <p>4 condition of the borrower and the terms.</p> <p>5 Q. Let's look at the next paragraph.</p> <p>6 Do you see it relates to HCRE?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see how during 2014 and</p> <p>9 '15, HCRE issued promissory notes to Highland in</p> <p>10 the aggregate amount of \$13 million and that</p> <p>11 principal amount plus interest was due at the end</p> <p>12 of the year?</p> <p>13 A. Sorry, it just says it's payable on</p> <p>14 demand, right?</p> <p>15 Q. Right.</p> <p>16 And the amount is – that was loaned</p> <p>17 was \$13 million, but at year end 2015, the unpaid</p> <p>18 principal and interest actually equaled</p> <p>19 \$13.3 million.</p> <p>20 Have I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Is there anything in this paragraph</p> <p>23 that says or suggests that Highland forgave in</p> <p>24 whole or in part any loans that were made to HCRE</p> <p>25 in the year 2014 or '15?</p>



<p>Page 138</p> <p>1 ALAN JOHNSON</p> <p>2 A. No.</p> <p>3 MR. MORRIS: Let's go to the next</p> <p>4 paragraph.</p> <p>5 Q. Do you see there's a reference to</p> <p>6 loans or promissory notes that were issued to</p> <p>7 Highland by HCMSI?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 And do you see that the aggregate</p> <p>11 amount of the notes was \$23 million?</p> <p>12 A. Yes.</p> <p>13 Q. And do you see that during the years</p> <p>14 ended 2014, Highland Capital Management Services,</p> <p>15 Inc. repaid \$8.1 million in principal?</p> <p>16 A. Yes.</p> <p>17 Q. Is it customary in the industry to</p> <p>18 make principal payments or interest payments</p> <p>19 against loans that are the subject to agreements</p> <p>20 of forgiveness?</p> <p>21 A. It really would depend on the</p> <p>22 likelihood of it being forgiven. If I had a loan</p> <p>23 that I thought wouldn't be forgiven, I might pay</p> <p>24 it early because I just don't think the</p> <p>25 probability of being forgiven is likely. If I</p>	<p>Page 139</p> <p>1 ALAN JOHNSON</p> <p>2 think it's likely or highly likely, I would try to</p> <p>3 avoid paying down the balance and wait for it to</p> <p>4 be forgiven.</p> <p>5 Q. And is that the advice you would give</p> <p>6 to the maker of a note who owed money that was</p> <p>7 subject to a forgiveness agreement?</p> <p>8 A. Maker of the loan, I would tell them</p> <p>9 if -- if things are looking like you're going to</p> <p>10 forgive it, they probably won't want to pay down</p> <p>11 the principal and the interest if they can avoid</p> <p>12 it, and if the -- it's unlikely it will be</p> <p>13 forgiven due to the terms, then they're more</p> <p>14 likely to pay the principal and interest sooner.</p> <p>15 Q. Is there anything in this paragraph</p> <p>16 that says or suggests that Highland had agreed to</p> <p>17 forgive in whole or in part any loan that it had</p> <p>18 extended to Highland Capital Management Services?</p> <p>19 A. I don't believe so, no.</p> <p>20 MR. MORRIS: Okay. Let's go to the</p> <p>21 2016 financials.</p> <p>22 Q. Do you see that this is the audited</p> <p>23 financial statements for Highland Capital</p> <p>24 Management, L.P. for the period ending December</p> <p>25 31, 2016?</p>
<p>Page 140</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you're not relying on this</p> <p>4 report for any of your opinions, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Can we go to page 31,</p> <p>8 please.</p> <p>9 Q. Okay. Do you see notes and other</p> <p>10 amounts due from affiliates?</p> <p>11 A. Yes.</p> <p>12 Q. The first paragraph relates to loans</p> <p>13 between Highland and its affiliate HCMFA.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is there anything in this paragraph</p> <p>17 that states or suggests that Highland has forgiven</p> <p>18 in whole or in part any portion of any loan that</p> <p>19 it made to HCMFA?</p> <p>20 A. No.</p> <p>21 Q. Looking at the next paragraph, do you</p> <p>22 see that concerns loans between Highland and</p> <p>23 NexPoint Advisors?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything in that paragraph</p>	<p>Page 141</p> <p>1 ALAN JOHNSON</p> <p>2 that states or suggests that Highland forgave in</p> <p>3 whole or in part any portion of any loan that it</p> <p>4 gave to NexPoint?</p> <p>5 A. No.</p> <p>6 Q. Looking at the next paragraph, do you</p> <p>7 see there's a reference to loans between Highland</p> <p>8 and HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. Is there any statement or suggestions</p> <p>11 in that paragraph that Highland forgave in whole</p> <p>12 or in part any loan it made to HCRE Partners, LLC?</p> <p>13 A. No.</p> <p>14 Q. Looking at the next paragraph, do you</p> <p>15 see there's a reference to loans between Highland</p> <p>16 and HCMSI?</p> <p>17 A. Yes.</p> <p>18 Q. Is there anything in that paragraph</p> <p>19 that states or suggests that Highland forgave in</p> <p>20 whole or in part any loan that it made to HCMSI?</p> <p>21 A. No.</p> <p>22 MR. MORRIS: Okay. Can we go to the</p> <p>23 next paragraph.</p> <p>24 Q. Do you see there's a reference to</p> <p>25 promissory notes that James Dondero issued to</p>

<p>Page 142</p> <p>1 ALAN JOHNSON</p> <p>2 Highland in the aggregate amount of \$14.8 million</p> <p>3 in 2016?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 So this is the first time we're seeing</p> <p>7 a loan to Mr. Dondero that's reported in the</p> <p>8 financial statements that we've looked at. Is</p> <p>9 that fair?</p> <p>10 A. I think that's right, yes.</p> <p>11 Q. Okay.</p> <p>12 And according to this audited</p> <p>13 financial statement, Highland loaned Mr. Dondero</p> <p>14 \$14.8 million in 2016.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. And at the end of the year, he</p> <p>18 actually owed principal and interest in the amount</p> <p>19 of \$14.9 million, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And there's no statement or suggestion</p> <p>22 in this paragraph that Highland had forgiven in</p> <p>23 whole or in part any portion of the loans that it</p> <p>24 had extended to Mr. Dondero.</p> <p>25 Do I have that right?</p>	<p>Page 143</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 Do you see the next paragraph relates</p> <p>5 to a gentleman named Mark Okada?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any understanding as to</p> <p>8 who Mr. Okada is?</p> <p>9 A. He was the other major shareholder in</p> <p>10 Highland.</p> <p>11 Q. And do you understand him to be one of</p> <p>12 the – to be a co-founder with Mr. Dondero of</p> <p>13 Highland?</p> <p>14 A. I believe that's right, yes.</p> <p>15 Q. Did you make any inquiry as to whether</p> <p>16 or not Mr. Okada had ever obtained any loans from</p> <p>17 Highland?</p> <p>18 A. I don't – I don't believe I did.</p> <p>19 Q. Do you know if Highland ever forgave</p> <p>20 any loan in whole or in part that it extended to</p> <p>21 Mr. Okada?</p> <p>22 A. I don't know.</p> <p>23 Q. Are you aware that Mr. Okada paid back</p> <p>24 the loan referenced in this paragraph in full plus</p> <p>25 interest?</p>
<p>Page 144</p> <p>1 ALAN JOHNSON</p> <p>2 A. I was not aware of that.</p> <p>3 MR. MORRIS: Let's just go to the next</p> <p>4 page to see if there's anything else here.</p> <p>5 Q. There's a reference to Dugaboy.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. You don't know what Dugaboy is, do</p> <p>9 you?</p> <p>10 A. I do not.</p> <p>11 Q. Nobody has ever told you about</p> <p>12 Dugaboy.</p> <p>13 Do I have that right?</p> <p>14 A. That's right.</p> <p>15 Q. So you weren't aware that Highland</p> <p>16 loaned \$23.4 million to Dugaboy in 2016?</p> <p>17 A. Well, that's not – it says they</p> <p>18 purchased a promissory note due from Dugaboy.</p> <p>19 Q. Okay.</p> <p>20 So now Dugaboy owes the partnership</p> <p>21 \$23.4 million, correct?</p> <p>22 A. That's not – at least my reading of</p> <p>23 it is they purchased a note from Dugaboy.</p> <p>24 Q. Why don't we assume that what they</p> <p>25 meant by that was that Dugaboy provided a note to</p>	<p>Page 145</p> <p>1 ALAN JOHNSON</p> <p>2 Highland in the amount of \$23.4 million.</p> <p>3 Okay? Can we make that assumption?</p> <p>4 A. We can assume that. That's not what</p> <p>5 it says.</p> <p>6 Q. Okay. I'm going to ask you to</p> <p>7 assume –</p> <p>8 A. Okay.</p> <p>9 Q. – that in 2016, Dugaboy incurred an</p> <p>10 obligation to Highland in the amount of</p> <p>11 \$23.6 million.</p> <p>12 I'm going to ask you to further assume</p> <p>13 that the Dugaboy Investment Trust is a trust</p> <p>14 created by Jim Dondero.</p> <p>15 I'm going to ask you to further assume</p> <p>16 that the purpose of the trust is to provide living</p> <p>17 expenses to the beneficiaries.</p> <p>18 I'm going to ask you to further assume</p> <p>19 that Mr. Dondero is the beneficiary of that trust</p> <p>20 for his lifetime.</p> <p>21 And I'm going to ask you to further</p> <p>22 assume that his sister Nancy is the trustee.</p> <p>23 If Highland loaned money to Dugaboy,</p> <p>24 is that a fact that would have been relevant to</p> <p>25 your analysis?</p>

<p>1 ALAN JOHNSON</p> <p>2 A. It could have been. It could have</p> <p>3 been.</p> <p>4 Q. And why could it have been relevant to</p> <p>5 your analysis?</p> <p>6 A. Well, if it's in effect a loan to him,</p> <p>7 then I would probably consider it similar to the</p> <p>8 other loans, but maybe if I had time to think</p> <p>9 about it, it – I might have considered</p> <p>10 differently.</p> <p>11 But if I came to the conclusion that</p> <p>12 loaning to that – the investment trust or to him</p> <p>13 personally is essentially the same thing, then I</p> <p>14 probably would have considered, you know, an</p> <p>15 equal – on an equal basis.</p> <p>16 Q. Now, neither Mr. Dondero nor Stinson</p> <p>17 shared with you any information about any loan</p> <p>18 that Highland ever extended to Dugaboy, if any.</p> <p>19 Is that correct?</p> <p>20 A. It may have been in the listing of</p> <p>21 loans – the listing, but I had no separate</p> <p>22 conversation about Dugaboy, no.</p> <p>23 Q. There's nothing in this paragraph that</p> <p>24 suggests that any loan between Dugaboy and</p> <p>25 Highland was forgiven in whole or in part in 2016,</p>	<p>Page 146</p> <p>1 ALAN JOHNSON</p> <p>2 correct?</p> <p>3 A. That's right.</p> <p>4 Q. So if you look at your notes and</p> <p>5 refresh your recollection as to what we've been</p> <p>6 through just now, is it fair to say that there's</p> <p>7 no evidence of Highland forgiving any loan to</p> <p>8 anybody in the world in whole or in part at any</p> <p>9 time since 2008?</p> <p>10 MR. AIGEN: Objection, form.</p> <p>11 A. The ones we've looked through, I think</p> <p>12 you're right. I think there was forgiveness in</p> <p>13 2008. I think that's correct.</p> <p>14 Q. And given the amounts of the loans</p> <p>15 that we looked at in 2008 – and if you want to</p> <p>16 refer to your cheat sheet to refresh your</p> <p>17 recollection – does it seem that the loans that</p> <p>18 were described in the 2008 audited financial</p> <p>19 statements might, in fact, be the very loans that</p> <p>20 were described for you by the four individuals you</p> <p>21 interviewed?</p> <p>22 A. They could – they certainly could</p> <p>23 have been, yes.</p> <p>24 Q. They're consistent with the amount of</p> <p>25 the loans that were forgiven as was told by you,</p>
<p>1 ALAN JOHNSON</p> <p>2 right?</p> <p>3 A. That is correct, yes.</p> <p>4 MR. MORRIS: Let's go to 2017.</p> <p>5 Can we go to page 30 –</p> <p>6 Q. Oh, I apologize, before we do that,</p> <p>7 did you see that first page, sir?</p> <p>8 Do you understand that we're looking</p> <p>9 at Highland's audited financial statements for the</p> <p>10 period ending December 31, 2017?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 And this is not a document you're</p> <p>14 relying on, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay.</p> <p>17 So now we're at page 30 of the audited</p> <p>18 financial statements, and we're again in the</p> <p>19 section relating to notes and other amounts due</p> <p>20 from affiliates.</p> <p>21 And do you see the first paragraph</p> <p>22 relates to notes that Highland Capital Management</p> <p>23 Fund Advisors has issued to Highland?</p> <p>24 A. Yes.</p> <p>25 Q. And this paragraph, like all of the</p>	<p>Page 148</p> <p>1 ALAN JOHNSON</p> <p>2 paragraphs, continues to say, quote, at the end,</p> <p>3 that fair value of the partnership's outstanding</p> <p>4 notes receivable approximates the carrying value</p> <p>5 of the notes receivable.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 And that sentence is at the end of</p> <p>10 every paragraph in this section.</p> <p>11 Do I have that right, if we continue</p> <p>12 to scroll there?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 So looking at the first paragraph</p> <p>16 relating to HCMFA, there's nothing in that</p> <p>17 paragraph that states or suggests that Highland</p> <p>18 agreed to forgive in whole or in part any loan it</p> <p>19 had extended to HCMFA, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And looking at the second paragraph,</p> <p>22 do you see that it states that Highland combined</p> <p>23 its outstanding promissory and revolving notes</p> <p>24 from NexPoint to a single note with a 30-year</p> <p>25 amortization schedule?</p>
<p>Page 149</p>	<p>Page 147</p>

<p>Page 150</p> <p>1 ALAN JOHNSON</p> <p>2 I'm summarizing.</p> <p>3 A. Yes.</p> <p>4 Q. And is it fair to assume that that's</p> <p>5 probably one of the notes that recently saw?</p> <p>6 MR. AIGEN: Objection, form.</p> <p>7 A. Yes. Yes.</p> <p>8 Q. Yes?</p> <p>9 A. Yes, that's correct.</p> <p>10 Q. And the reason it's correct is because</p> <p>11 it comports with your recollection that there was</p> <p>12 a roll-up of previously outstanding notes that</p> <p>13 were combined in one into a 30-year term note,</p> <p>14 right?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay.</p> <p>17 Is there anything in this paragraph</p> <p>18 that states or suggests that Highland agreed to</p> <p>19 forgive in whole or in part any aspect of any loan</p> <p>20 it ever gave to NexPoint?</p> <p>21 A. No, there's not.</p> <p>22 Q. Looking at the next paragraph for</p> <p>23 HCRE, do you see that there's a description of the</p> <p>24 promissory note that HCRE issued to Highland in</p> <p>25 exchange for a loan in December – in 2017?</p>	<p>Page 151</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yes.</p> <p>3 Q. Is there anything in that paragraph</p> <p>4 that suggests or states that Highland has agreed</p> <p>5 to forgive in whole or in part any portion of any</p> <p>6 loan it ever extended to HCRE?</p> <p>7 A. No.</p> <p>8 Q. The next paragraph refers to loans</p> <p>9 that Highland has extended to Highland Capital</p> <p>10 Management Services, Inc.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is there anything in that paragraph</p> <p>14 that states or suggests that Highland has agreed</p> <p>15 to forgive in whole or in part any portion of any</p> <p>16 loan it ever extended to HCMSI?</p> <p>17 A. No.</p> <p>18 MR. MORRIS: Can we go to the next</p> <p>19 paragraph, please.</p> <p>20 Q. Okay. These two paragraphs relate to</p> <p>21 Mr. Dondero and Mr. Okada.</p> <p>22 Did you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it wasn't up on the screen before,</p> <p>25 so I just want to make it clear that each of those</p>
<p>Page 152</p> <p>1 ALAN JOHNSON</p> <p>2 paragraph ends with the same sentence concerning</p> <p>3 the fair value of the notes approximating the</p> <p>4 carrying value the notes receivable.</p> <p>5 Do I have that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 Now, remember we saw in the 2016</p> <p>9 financials that Mr. Dondero had \$14.9 million</p> <p>10 outstanding at year end.</p> <p>11 Do you recall that?</p> <p>12 A. I don't specifically recall that,</p> <p>13 but – I don't specifically recall that, no.</p> <p>14 Q. I'll represent to you that the 2016</p> <p>15 audited financial statements showed that the</p> <p>16 outstanding principal and interest due by</p> <p>17 Mr. Dondero under the note that he issued to</p> <p>18 Highland was \$14.9 million. Okay?</p> <p>19 A. Okay.</p> <p>20 Q. With that representation, do you see</p> <p>21 that the amount has been reduced by \$400,000 at</p> <p>22 the end of 2017?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 And so is it fair – is it a fair</p>	<p>Page 153</p> <p>1 ALAN JOHNSON</p> <p>2 conclusion to reach that at some point in 2017,</p> <p>3 Mr. Dondero made payments against his obligations</p> <p>4 to Highland that reduced the amount owing from</p> <p>5 14.9 million to 14.5 million at the end of 2017,</p> <p>6 again, assuming that I'm right about 2016?</p> <p>7 A. That would be right. That would be</p> <p>8 correct, yes.</p> <p>9 Q. And there's nothing in this paragraph</p> <p>10 that states or suggests that Highland has agreed</p> <p>11 to forgive in whole or in part any loan it has</p> <p>12 ever extended to Mr. Dondero, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. So I would like you to note</p> <p>15 down, because it's hard to flip back – this is</p> <p>16 the dilemma of virtual depositions – but can you</p> <p>17 write down that Mr. Dondero owed Highland</p> <p>18 principal and interest of \$14-and-a-half million</p> <p>19 at the end of 2017?</p> <p>20 A. Okay.</p> <p>21 Q. And the next paragraph relates to</p> <p>22 Mr. Okada.</p> <p>23 There's nothing in there that states</p> <p>24 or suggests that Highland has agreed to forgive in</p> <p>25 whole or in part any loan Highland had ever</p>

<p>1 ALAN JOHNSON</p> <p>2 extended to Mr. Okada, correct?</p> <p>3 A. That's correct.</p> <p>4 MR. MORRIS: Okay. Can we continue on</p> <p>5 to the next page.</p> <p>6 Q. And do you see the first paragraph</p> <p>7 relates to Dugaboy again?</p> <p>8 A. Yes.</p> <p>9 Q. And it specifically says that during</p> <p>10 the year ending December 31, 2017, Dugaboy did not</p> <p>11 issue any new notes to the partnership.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then it states that all</p> <p>15 outstanding notes accrue interest at the rate of</p> <p>16 2.75 percent.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then it says that at year end, the</p> <p>20 total unpaid principal and interest due was</p> <p>21 approximately \$22.8 million and was payable on</p> <p>22 demand?</p> <p>23 Have I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>	<p>Page 154</p> <p>1 ALAN JOHNSON</p> <p>2 Is there anything in this paragraph</p> <p>3 that states or suggests that Highland ever agreed</p> <p>4 to forgive in whole or in part any loan it ever</p> <p>5 extended to Dugaboy?</p> <p>6 A. No.</p> <p>7 Q. The next paragraph refers to a</p> <p>8 contribution agreement.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Have any idea what a contribution</p> <p>12 agreement is in this context?</p> <p>13 A. Not in this context, no.</p> <p>14 Q. Is that something you might – you</p> <p>15 might have asked about had you been told – had</p> <p>16 you been given these financial statements, let's</p> <p>17 say, back in July?</p> <p>18 A. I – I might have asked about this,</p> <p>19 yes.</p> <p>20 Q. I mean, in fact, this is in the</p> <p>21 section of the audited financial statements that</p> <p>22 is entitled –</p> <p>23 MR. MORRIS: If would can go back to</p> <p>24 the top – no – I'm sorry – the top of</p> <p>25 that section, page – yeah.</p> <p>Page 155</p>
<p>1 ALAN JOHNSON</p> <p>2 Q. That section is specifically called</p> <p>3 "Notes and Other Amounts Due From Affiliates,"</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. If you wanted to assess whether or not</p> <p>7 Mr. Dondero was reasonably compensated, wouldn't</p> <p>8 you want to know about all of the notes that</p> <p>9 Highland held on behalf of the affiliates that</p> <p>10 were owned and controlled by Mr. Dondero?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. I – I would have – if I had had the</p> <p>13 financials, I would have certainly looked through</p> <p>14 these things, yes.</p> <p>15 Q. And if you had been given this</p> <p>16 information, wouldn't you want to know the full</p> <p>17 extent – I mean – withdrawn.</p> <p>18 I think we – I think at the beginning</p> <p>19 of the day – I know we've been going at this for</p> <p>20 a while – you specifically told me that you would</p> <p>21 advise a decision maker to know and understand the</p> <p>22 full scope of all loans that were given to or for</p> <p>23 the benefit of the executive before entering into</p> <p>24 a forgiveness agreement, right?</p> <p>25 A. Yes.</p> <p>Page 156</p>	<p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 And the information that's contained</p> <p>4 in this section of the audited financial</p> <p>5 statements specifically pertains to loans to</p> <p>6 affiliates. Isn't that right?</p> <p>7 A. Yes, among other things, but yes.</p> <p>8 Q. Okay.</p> <p>9 In order to know if Mr. Dondero had</p> <p>10 been compensated in a way equal to his peers</p> <p>11 wouldn't you want to know the full extent of</p> <p>12 amounts loaned to entities he owned and</p> <p>13 controlled?</p> <p>14 MR. AIGEN: Objection to form.</p> <p>15 A. Well, a straight loan to someone is</p> <p>16 not generally compensation. If the loan is going</p> <p>17 to be forgiven at some point in the future, yes,</p> <p>18 that would have been a relevant – you know,</p> <p>19 relevant factor, but just a straight loan wouldn't</p> <p>20 generally be considered compensation.</p> <p>21 Q. If Highland – let's say</p> <p>22 hypothetically Highland – withdrawn.</p> <p>23 You see NexPoint Advisors on the page,</p> <p>24 the second box?</p> <p>25 A. Yes.</p> <p>Page 157</p>



<p>Page 158</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Highland – let's assume that James</p> <p>3 Dondero owns and controls NexPoint. Okay?</p> <p>4 A. Yes.</p> <p>5 Q. As of May 31, 2017, according to</p> <p>6 Highland's audited financial statements, it loaned</p> <p>7 NexPoint \$30.7 million.</p> <p>8 Do you see that?</p> <p>9 A. Well, I think it's saying it combined</p> <p>10 all these notes together and a new note of 30.7,</p> <p>11 right.</p> <p>12 Q. I appreciate that – that precision.</p> <p>13 So let me restate the question.</p> <p>14 According to the audited financial</p> <p>15 statements, Highland had loaned in the aggregate</p> <p>16 \$30.7 million to NexPoint, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 And what if I told you that NexPoint</p> <p>20 took that money and they invested it and they</p> <p>21 turned that money into \$100 million, would that be</p> <p>22 a benefit to Mr. Dondero if you assume that he</p> <p>23 owned and controlled the entity?</p> <p>24 A. Well, it's certainly – he made a wise</p> <p>25 investment with his \$30 million loan for sure.</p>	<p>Page 159</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And would you agree that Highland</p> <p>3 enabled him to make that wise investment by giving</p> <p>4 him the loan?</p> <p>5 A. They facilitated it, but it depends</p> <p>6 what the terms of the loan are and – so, yes, he</p> <p>7 would have benefited from his wise investment, and</p> <p>8 they would have facilitated him doing that by</p> <p>9 loaning the \$30 million.</p> <p>10 Q. And NexPoint didn't go into the</p> <p>11 marketplace to negotiate for a loan with a third</p> <p>12 party, right?</p> <p>13 A. That, I don't know.</p> <p>14 Q. Well, they took the loan from</p> <p>15 Highland, correct?</p> <p>16 A. It already had loans, right, from</p> <p>17 Highland, yes.</p> <p>18 Q. And you understood that Mr. Dondero</p> <p>19 controlled both NexPoint and Highland at the time,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 And so is it fair to say based on your</p> <p>24 experience and expertise that Highland used –</p> <p>25 withdrawn.</p>
<p>Page 160</p> <p>1 ALAN JOHNSON</p> <p>2 Is it based – is it fair based on</p> <p>3 your knowledge and expertise that Mr. Dondero used</p> <p>4 Highland to increase the value of its affiliated</p> <p>5 companies by providing it with capital?</p> <p>6 MR. AIGEN: Objection to form.</p> <p>7 A. Yeah, I don't – I guess I would be</p> <p>8 uncomfortable – I'm not sure I understand the</p> <p>9 question. I'm sorry.</p> <p>10 Q. Okay.</p> <p>11 You did not – your report and your</p> <p>12 opinions – withdrawn. Let me take this simply.</p> <p>13 Your conclusion in your report is that</p> <p>14 Mr. Dondero had earnings from Highland of</p> <p>15 approximately \$3 million for the 7 years prior to</p> <p>16 the petition date; correct?</p> <p>17 A. That's right, from the – from the –</p> <p>18 yes, from the various entities, yes.</p> <p>19 Q. And based on your analysis of</p> <p>20 comparable executives, you believe he should have</p> <p>21 been earning \$6 million for each of those seven</p> <p>22 years, correct?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. And the difference between the two</p> <p>25 equals \$3 million for seven years, or \$21 million.</p>	<p>Page 161</p> <p>1 ALAN JOHNSON</p> <p>2 Do I have that right?</p> <p>3 A. Yes.</p> <p>4 Q. And you calculated that based solely</p> <p>5 on certain W-2 income, correct?</p> <p>6 A. W-2s and I think, also, with the</p> <p>7 1040s, I believe, but yeah, it was the W-2s.</p> <p>8 Q. So you did not take into account, for</p> <p>9 example, any benefit that Mr. Dondero received by</p> <p>10 using Highland's capital to support his affiliated</p> <p>11 companies, correct?</p> <p>12 MR. AIGEN: Objection, form.</p> <p>13 A. We did not take into account any</p> <p>14 ownership – using the ownership capital either</p> <p>15 for him or for anybody else, that's correct.</p> <p>16 Q. And you didn't try to quantify the</p> <p>17 benefit to Mr. Dondero from using Highland's</p> <p>18 capital to support his affiliated companies,</p> <p>19 correct?</p> <p>20 A. We made no attempt to – to do it for</p> <p>21 him or for anybody else we might have thought of</p> <p>22 as comparable executives, that's correct.</p> <p>23 Q. Would you – would you agree with me</p> <p>24 that it was a benefit to Mr. Dondero to have</p> <p>25 access to Highland's capital for the purpose of</p>

<p>Page 162</p> <p>1 ALAN JOHNSON</p> <p>2 supporting his affiliated companies?</p> <p>3 MR. AIGEN: Objection, form.</p> <p>4 A. He – he benefited from having</p> <p>5 significant capital – he certainly benefited as</p> <p>6 an owner from something significant capital,</p> <p>7 absolutely.</p> <p>8 Q. Okay.</p> <p>9 And how would you – how would you</p> <p>10 describe that benefit?</p> <p>11 A. Well, he would get returns on the</p> <p>12 capital. Either through loans or direct</p> <p>13 investments as the owner of both Highland and</p> <p>14 NexPoint, he would benefit from their successes</p> <p>15 and, of course, lose from their failures.</p> <p>16 Q. Are you aware of any failures?</p> <p>17 A. In getting these financials, there</p> <p>18 were a couple of years that were terrible. There</p> <p>19 were some outstanding years, so it varied during</p> <p>20 this period.</p> <p>21 So there were certainly a couple of</p> <p>22 years with very disappointing results.</p> <p>23 Q. And which entity are you referring to</p> <p>24 that had those disappointing results? Was that</p> <p>25 Highland?</p>	<p>Page 163</p> <p>1 ALAN JOHNSON</p> <p>2 A. I believe – I believe – I believe it</p> <p>3 was Highland as well, yes.</p> <p>4 Q. And do you think that when a company</p> <p>5 fails, that that's a factor that a decision maker</p> <p>6 should take into account when deciding whether or</p> <p>7 not to forgive loans?</p> <p>8 Is that part of the financial</p> <p>9 condition that we described earlier?</p> <p>10 A. Absolutely, the condition of the</p> <p>11 company, it's both income, capital, and the</p> <p>12 importance of achieving those goals as part of</p> <p>13 forgiving absolutely should be considered.</p> <p>14 MR. MORRIS: I've forgotten if I've</p> <p>15 gone through 2017 yet.</p> <p>16 Does anybody recall?</p> <p>17 All right. We'll do it again.</p> <p>18 MS. CANTY: This is 2017 on the</p> <p>19 screen.</p> <p>20 MR. MORRIS: Right. But I have – all</p> <p>21 right. I'll just do it again then.</p> <p>22 Michael starts objecting as asked and</p> <p>23 answered, I'll get the hint.</p> <p>24 Q. Mr. Johnson, take a look at the first</p> <p>25 paragraph.</p>
<p>Page 164</p> <p>1 ALAN JOHNSON</p> <p>2 Do you see that that – under the</p> <p>3 section "Notes and Other Amounts Due From</p> <p>4 Affiliates," describes loans between Highland and</p> <p>5 HCMFA in 2017?</p> <p>6 A. Yes.</p> <p>7 Q. Is there anything in that paragraph</p> <p>8 that states or suggests that Highland agreed to</p> <p>9 forgive in whole or in part any loan it ever</p> <p>10 extended to HCMFA?</p> <p>11 A. No.</p> <p>12 Q. Looking at the next paragraph, next</p> <p>13 point, do you see that the next paragraph concerns</p> <p>14 loans that Highland extended to NexPoint?</p> <p>15 A. Yes.</p> <p>16 Q. Is there anything in that paragraph</p> <p>17 that states or suggests that Highland has agreed</p> <p>18 to forgive in whole or in part any note that it</p> <p>19 ever – any loan it ever extended to NexPoint?</p> <p>20 A. No.</p> <p>21 Q. All right.</p> <p>22 Looking at the next paragraph, do you</p> <p>23 see the next paragraph describes loans between</p> <p>24 Highland and HCRE Partners, LLC?</p> <p>25 A. Yes.</p>	<p>Page 165</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Is there anything in that paragraph</p> <p>3 that states or suggests that Highland has agreed</p> <p>4 to forgive in whole or in part any loan it ever</p> <p>5 extended to HCRE Partners, LLC?</p> <p>6 A. No.</p> <p>7 Q. The next paragraph relates to loans</p> <p>8 between Highland and Highland Capital Management</p> <p>9 Services, Inc.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is there anything in that paragraph</p> <p>13 that states or suggests that Highland has agreed</p> <p>14 to forgive in whole or in part any loan it ever</p> <p>15 extended to Highland Capital Management Services,</p> <p>16 Inc.?</p> <p>17 A. No.</p> <p>18 Q. The next paragraph relates to</p> <p>19 Mr. Dondero.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see that it states that</p> <p>23 Mr. Dondero didn't obtain any new loans from</p> <p>24 Highland in 2017?</p> <p>25 A. Yes.</p>

<p>1 ALAN JOHNSON</p> <p>2 Q. And do you see that –</p> <p>3 MR. MORRIS: Michael, I'm boring you,</p> <p>4 because you should be asking as asked and</p> <p>5 answered because there's that \$14.5 million</p> <p>6 number that I know Mr. Johnson wrote down,</p> <p>7 right? So we have done this before. Okay?</p> <p>8 Let's go to the 2018 audited</p> <p>9 financials.</p> <p>10 MS. CANTY: This is Exhibit 34.</p> <p>11 MR. MORRIS: Thank you very much.</p> <p>12 (Exhibit 34, Highland's audited</p> <p>13 financial statements for December 31, 2018,</p> <p>14 was marked for identification at this time.)</p> <p>15 MR. MORRIS: And if we can go to the</p> <p>16 first page.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see that this is a – the first</p> <p>19 page of Highland's audited financial statements</p> <p>20 for the period ending December 31, 2018?</p> <p>21 A. Yes.</p> <p>22 MR. MORRIS: Before we go to – before</p> <p>23 we go to the affiliate loans, can we just</p> <p>24 turn to the – I think it's the first</p> <p>25 substantive page, the balance sheet.</p>	<p>Page 166</p> <p>1 ALAN JOHNSON</p> <p>2 Yes, stop right there.</p> <p>3 Q. Do you see – do you see the balance</p> <p>4 sheet, sir?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that near the bottom</p> <p>7 there's a line item showing notes and other</p> <p>8 amounts due from affiliates?</p> <p>9 A. Oh, yeah – I'm sorry – yes.</p> <p>10 Q. And do you see that Highland has</p> <p>11 carried on its balance sheet \$173.4 million in</p> <p>12 notes and other amounts due from affiliates?</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand that the affiliates</p> <p>15 are owned and controlled by Mr. Dondero?</p> <p>16 A. Owned and controlled? I think</p> <p>17 Mr. Okada owned some of – he certainly controlled</p> <p>18 them. I don't know if he had 100 percent</p> <p>19 ownership of all of them. He certainly controlled</p> <p>20 the affiliates we're talking about.</p> <p>21 Q. At the time that you prepared your</p> <p>22 report, did you know that Highland's affiliates</p> <p>23 owed it \$174 million as of the end of 2018?</p> <p>24 A. I don't think I was aware of that, no.</p> <p>25 Q. Is that a fact that you would have</p>
<p>1 ALAN JOHNSON</p> <p>2 wanted to be aware of before you prepared your</p> <p>3 report?</p> <p>4 A. I'm not sure. I'm not sure.</p> <p>5 Q. Well, I think you testified that if</p> <p>6 you were advising a decision maker, you would</p> <p>7 advise them to try to obtain as much information</p> <p>8 as they could concerning any loans that had been</p> <p>9 extended by the employer to or for the benefit of</p> <p>10 the executive, correct?</p> <p>11 A. That is correct.</p> <p>12 Q. And is there any reason for you to</p> <p>13 believe that this \$173.4 million didn't relate to</p> <p>14 loans that were made by the employer to or for the</p> <p>15 benefit of the executive and Mr. Okada?</p> <p>16 MR. AIGEN: Objection, form.</p> <p>17 A. Yeah, I don't – at least that</p> <p>18 174 million would say they're notes from</p> <p>19 affiliates, but the affiliates is also the</p> <p>20 businesses.</p> <p>21 So I'm not – I certainly would want</p> <p>22 to be aware of that. Whether it would have</p> <p>23 changed my report, I'd have to – I'd have to</p> <p>24 think about.</p> <p>25 Q. Okay.</p>	<p>Page 168</p> <p>1 ALAN JOHNSON</p> <p>2 But you weren't told about the</p> <p>3 totality of the loans, correct?</p> <p>4 A. I did not know the totality, no.</p> <p>5 Q. Did you know that more than 15 percent</p> <p>6 of Highland's assets were tied up in notes and</p> <p>7 other amounts due from affiliates?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. I did not know that.</p> <p>10 Q. Is that a fact that you would have</p> <p>11 liked to have known about before you issued your</p> <p>12 report?</p> <p>13 A. As I answered before, I'm not sure.</p> <p>14 I'm not sure.</p> <p>15 Q. Do you think this is a fact that the</p> <p>16 decision maker should have known about before he</p> <p>17 or she entered into the forgiveness agreement?</p> <p>18 A. I think – as I testified before, I</p> <p>19 think the decision makers certainly understand the</p> <p>20 totality of the loans that are potentially being</p> <p>21 forgiven, absolutely.</p> <p>22 Q. Do you think the decision maker could</p> <p>23 have done his or her job without knowing that the</p> <p>24 employer had extended over \$173 million to the</p> <p>25 executive before entering into the agreement?</p>
<p>Page 169</p>	<p>Page 167</p>

<p>Page 170</p> <p>1 ALAN JOHNSON</p> <p>2 MR. AIGEN: Objection, form.</p> <p>3 A. Well, I think – at least I</p> <p>4 understand, the way it's stated here in the</p> <p>5 financials, those are to the businesses.</p> <p>6 So I think the – a decision maker</p> <p>7 should know, you know, the totality of the loans</p> <p>8 being forgiven and the decision maker probably</p> <p>9 should have some idea of the various – as I</p> <p>10 testified earlier, about the financial condition</p> <p>11 of the company, which would include these notes</p> <p>12 from affiliates.</p> <p>13 MR. MORRIS: Let's – can we scroll</p> <p>14 down a page or two?</p> <p>15 Okay. Stop right – a little</p> <p>16 further – no, go to the top of this page.</p> <p>17 Q. Do you see that this page is the</p> <p>18 consolidated income statement?</p> <p>19 A. Yes.</p> <p>20 Q. And you're familiar with income</p> <p>21 statements. Is that right?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: Okay. Can we go to the</p> <p>24 bottom, please?</p> <p>25 Q. Do you see that in the year before</p>	<p>Page 171</p> <p>1 ALAN JOHNSON</p> <p>2 bankruptcy, the net loss attributable to Highland</p> <p>3 was more than \$73 million, at the bottom of the</p> <p>4 page?</p> <p>5 A. Yes.</p> <p>6 Q. Is that a fact that you knew of at the</p> <p>7 time that you prepared your report?</p> <p>8 A. I did not.</p> <p>9 Q. Is that a fact that you would have</p> <p>10 liked to have known about before you prepared your</p> <p>11 report?</p> <p>12 A. I would have liked to have seen all of</p> <p>13 these financial statements before I prepared my</p> <p>14 report, absolutely.</p> <p>15 Q. Is the fact that Highland lost</p> <p>16 \$73 million in 2018 relevant to your analysis at</p> <p>17 all?</p> <p>18 A. I'd have to think about it, but I</p> <p>19 certainly would have wanted to know about it.</p> <p>20 Q. And you were told by Mr. Dondero that</p> <p>21 the forgiveness agreement was entered into in</p> <p>22 either December of 2018 or January or February of</p> <p>23 2019, correct?</p> <p>24 A. It's in my report. I can't remember</p> <p>25 if it was late '17 or '18 or late '18 and '19.</p>
<p>Page 172</p> <p>1 ALAN JOHNSON</p> <p>2 Sitting here, I don't recall which, but it was</p> <p>3 told a time frame. It was either late one year or</p> <p>4 early the next. I don't recall the –</p> <p>5 Q. We're not going to put it back up on</p> <p>6 the screen, but I'll just try to refresh your</p> <p>7 recollection that on page 6 of your report, you</p> <p>8 had stated, "I understand from Mr. Dondero that</p> <p>9 the 2018 loans that are the subject of this suit</p> <p>10 were modified by an agreement in late 2018 or</p> <p>11 early 2019."</p> <p>12 Does that refresh your recollection as</p> <p>13 to the timing of the purported agreement that was</p> <p>14 described to you?</p> <p>15 A. Yes, I think that's right, yep.</p> <p>16 Q. And do you understand that this</p> <p>17 \$74 million loss relates to the period ending in</p> <p>18 December 2018?</p> <p>19 A. Yes.</p> <p>20 Q. And do you think the decision maker</p> <p>21 should have known about the financial condition of</p> <p>22 the company when he or she entered into the</p> <p>23 agreement on behalf of Highland in late 2018 or</p> <p>24 early 2019?</p> <p>25 A. The decision maker should have had an</p>	<p>Page 173</p> <p>1 ALAN JOHNSON</p> <p>2 idea about the condition of the company,</p> <p>3 absolutely.</p> <p>4 Q. Do you have any reason to believe that</p> <p>5 the decision maker had any information about the</p> <p>6 financial condition of the company before agreeing</p> <p>7 on behalf of Highland to enter into a forgiveness</p> <p>8 of loans with the potential value of 40 to</p> <p>9 \$50 million?</p> <p>10 A. I have no information about that.</p> <p>11 MR. MORRIS: Can we go back to the</p> <p>12 balance sheet for a second?</p> <p>13 Q. Do you see how the assets exceed the</p> <p>14 liabilities and there's partners' capital of about</p> <p>15 \$371 million?</p> <p>16 A. Yes.</p> <p>17 Q. That partners' capital assumes that</p> <p>18 the value of the notes and other amounts due and</p> <p>19 affiliates equals \$173.4 million, correct?</p> <p>20 A. That's one of the assumptions, right,</p> <p>21 yes.</p> <p>22 Q. And there's nothing on the balance</p> <p>23 sheet that discloses potential litigation</p> <p>24 liability, correct?</p> <p>25 A. No, there's nothing on here, on the</p>

<p>Page 174</p> <p>1 ALAN JOHNSON</p> <p>2 balance sheet, no.</p> <p>3 Q. Did anybody ever give you any</p> <p>4 information about potential litigation risk that</p> <p>5 Highland faced in 2018 and '19?</p> <p>6 A. I think in preparing my report, I was</p> <p>7 aware of litigation around this company. I think</p> <p>8 there had been an arbitration award that was</p> <p>9 outstanding, so I was aware of any significant</p> <p>10 litigation risk and litigation expenses ongoing.</p> <p>11 I was aware of that.</p> <p>12 Q. Okay.</p> <p>13 So is it fair to say that the</p> <p>14 statement of partners' capital on this page, to</p> <p>15 the best of your knowledge, assumes the recovery</p> <p>16 in full – assumes, among other things, the</p> <p>17 recovery in full of the notes and other amounts</p> <p>18 due from affiliates in the amount of</p> <p>19 \$173.4 million?</p> <p>20 A. That's one of the assumptions that</p> <p>21 goes into this balance sheet, yes.</p> <p>22 Q. And is it fair to say that the</p> <p>23 statement of partners' capital doesn't take into</p> <p>24 account at all litigation risk?</p> <p>25 MR. AIGEN: Objection, form.</p>	<p>Page 175</p> <p>1 ALAN JOHNSON</p> <p>2 A. That, I don't know. I don't know what</p> <p>3 PwC would have done with the litigation risk.</p> <p>4 But if we're just looking at the line</p> <p>5 items here, I don't see a reserve for litigation,</p> <p>6 but that might be in the footnotes or so forth.</p> <p>7 But as written here, the balance sheet seems to</p> <p>8 suggest that there is no – there's nothing on</p> <p>9 here for litigation risk.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we go to page – I</p> <p>12 think it's 28.</p> <p>13 Q. Amount – you see, "Notes and Other</p> <p>14 Amounts Due From Affiliates"?</p> <p>15 A. Yes.</p> <p>16 Q. There's notes from HCMFA.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. We'll just do it the same way.</p> <p>20 Can you take a look at that paragraph</p> <p>21 and let me know if you see anything in there that</p> <p>22 states or suggests that Highland agreed to forgive</p> <p>23 in whole or in part any loan it ever extended to</p> <p>24 HCMFA?</p> <p>25 A. I don't see that, no.</p>
<p>Page 176</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 Same question for the next paragraph,</p> <p>4 can you tell me if you see anything in the second</p> <p>5 paragraph that states or suggests that Highland</p> <p>6 has agreed to forgive in whole or in part any loan</p> <p>7 it ever extended to NexPoint?</p> <p>8 A. I don't – I don't see that there</p> <p>9 either.</p> <p>10 Q. Next paragraph, is there anything in</p> <p>11 the next paragraph that states or suggests that</p> <p>12 Highland has agreed to forgive in whole or in part</p> <p>13 any loan it ever extended to HCRE Partners?</p> <p>14 A. No, I don't see that.</p> <p>15 Q. The next paragraph, is there anything</p> <p>16 in the next paragraph that states or suggests that</p> <p>17 Highland has agreed to forgive in whole or in part</p> <p>18 any note it ever extended to Highland Capital</p> <p>19 Management Services, Inc.?</p> <p>20 A. No, I don't see that.</p> <p>21 Q. And do you see that with respect to</p> <p>22 these four paragraphs, each of them still contains</p> <p>23 as its last sentence the statement that the fair</p> <p>24 value of the partnership's outstanding notes</p> <p>25 receivable approximates the carrying value the</p>	<p>Page 177</p> <p>1 ALAN JOHNSON</p> <p>2 notes receivable?</p> <p>3 A. Yes.</p> <p>4 Q. So this is as late as – for the</p> <p>5 financial statements that are dated as of – I'm</p> <p>6 sorry.</p> <p>7 This is – these statements refer –</p> <p>8 withdrawn.</p> <p>9 These statements concern Highland's</p> <p>10 audited financial statements for the period ending</p> <p>11 December 31, 2018, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Let's continue to scroll down.</p> <p>14 Do you see there's a reference to Jim</p> <p>15 Dondero having issued new promissory notes for</p> <p>16 \$14.9 million in 2018?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So if you add the 14.9 with the</p> <p>19 14.5 that was due – if you could write this</p> <p>20 down – at the end of 2018, that would be a total</p> <p>21 of \$29.4 million.</p> <p>22 Do I have that right?</p> <p>23 A. I believe that's right, yes.</p> <p>24 Q. Okay.</p> <p>25 But at the end of the year, he</p>



<p>Page 178</p> <p>1 ALAN JOHNSON</p> <p>2 actually owed just a hair less than that,</p> <p>3 \$29.2 million.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 Is it fair to conclude that at some</p> <p>8 point in 2018, Mr. Dondero made a modest payment</p> <p>9 of principal and interest against the loans that</p> <p>10 were outstanding to Highland?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. That – that appears what's going on,</p> <p>13 yes.</p> <p>14 Q. And there's certainly nothing in this</p> <p>15 paragraph that states or suggests that Highland</p> <p>16 agreed to forgive in whole or in part any loan it</p> <p>17 ever extended to Mr. Dondero, correct?</p> <p>18 A. That's right.</p> <p>19 Q. And the next paragraph again relates</p> <p>20 to Mr. Okada.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And there's nothing in that paragraph</p> <p>24 that states or suggests that Mr. Okada had – had</p> <p>25 reached an agreement with Highland on the</p>	<p>Page 179</p> <p>1 ALAN JOHNSON</p> <p>2 forgiveness of any loan extended to him in whole</p> <p>3 or in part?</p> <p>4 A. That's correct.</p> <p>5 MR. MORRIS: Okay. Can we go down to</p> <p>6 the next page, please.</p> <p>7 Q. Okay. And then you have the same</p> <p>8 statement about Dugaboy and the contribution</p> <p>9 agreement.</p> <p>10 Do you see that?</p> <p>11 A. Yes, I see it.</p> <p>12 Q. Is there anything in either paragraph</p> <p>13 that states or suggests that Highland has agreed</p> <p>14 to forgive in whole or in part any loan it ever</p> <p>15 extended to Dugaboy or pursuant to – in</p> <p>16 connection with the contribution agreement?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 Are you familiar with the concept of</p> <p>20 subsequent events?</p> <p>21 A. Sure.</p> <p>22 Q. And what's your understanding of the</p> <p>23 concept of subsequent events for purposes of</p> <p>24 audited financial statements?</p> <p>25 A. In the footnotes, often they'll talk</p>
<p>Page 180</p> <p>1 ALAN JOHNSON</p> <p>2 about events that happen shortly after the end of</p> <p>3 the fiscal year and before the reports or things,</p> <p>4 and usually, they'll appear in the footnotes and</p> <p>5 talk about events that a shareholder should be</p> <p>6 aware of that have happened following the</p> <p>7 financial year end and the issues of the</p> <p>8 financials.</p> <p>9 Q. It's not just the shareholders, it's</p> <p>10 anybody who uses or relies on the financial</p> <p>11 statements should have that information. Is that</p> <p>12 fair?</p> <p>13 MR. AIGEN: Objection.</p> <p>14 A. Anybody who – yeah, well said, anyone</p> <p>15 who relies on it, the subsequent event is</p> <p>16 material – is material enough that you should</p> <p>17 be – you she take into account and be aware of.</p> <p>18 Q. Now, if Mr. Dondero had entered into</p> <p>19 the forgiveness agreement in late 2018, would you</p> <p>20 have expected it to have been described in the</p> <p>21 section that we just looked at?</p> <p>22 MR. AIGEN: Objection, form.</p> <p>23 A. I would hope it would show up in the</p> <p>24 reported financials. I would hope that would</p> <p>25 happen, yes.</p>	<p>Page 181</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Why is it your hope that it would</p> <p>3 happen?</p> <p>4 A. Well, as I testified earlier, I</p> <p>5 recommend to clients, and sometimes they follow,</p> <p>6 to document things in writing, and if it's in</p> <p>7 writing, it would usually or hopefully would show</p> <p>8 up in the audited financial statements.</p> <p>9 Q. Would you always recommend your client</p> <p>10 to inform its auditors of any agreement relating</p> <p>11 to the forgiveness of loans made to executives?</p> <p>12 MR. AIGEN: Objection, form.</p> <p>13 A. I would certainly recommend – if it</p> <p>14 was an issue, I would certainly recommend to</p> <p>15 clients that they report to the finance team,</p> <p>16 which would then talk to the auditors, about how</p> <p>17 to disclose material loans to executives and if</p> <p>18 they were going to be forgiven.</p> <p>19 MR. MORRIS: Okay. Can we scroll</p> <p>20 down – I apologize, I don't know the page</p> <p>21 number, but there's a section of this report</p> <p>22 concerning subsequent events.</p> <p>23 Okay. Right there.</p> <p>24 Q. Do you see on page 38 of Highland's</p> <p>25 2018 audited financials there's Section 15</p>

<p>1 ALAN JOHNSON</p> <p>2 entitled, "Subsequent Events"?</p> <p>3 A. Yes.</p> <p>4 MR. MORRIS: Okay. If we could just</p> <p>5 show Mr. Johnson that portion and continue</p> <p>6 on to page 39.</p> <p>7 Q. Okay. And do you see – now that</p> <p>8 you've got the whole section on the screen, do you</p> <p>9 see in the next-to-the-last paragraph there's a</p> <p>10 reference to HCMFA having issued promissory notes</p> <p>11 to the partnership in the aggregate amount of</p> <p>12 \$7.4 million during the course of 2019 through the</p> <p>13 date of the report?</p> <p>14 A. Yeah, yes. Yes, I see that.</p> <p>15 Q. Is it your understanding with 30 years</p> <p>16 in the industry that the auditors would require</p> <p>17 the disclosure of material transactions that occur</p> <p>18 after the date of the report but prior to its</p> <p>19 issuance?</p> <p>20 MR. AIGEN: Objection, form.</p> <p>21 A. I'm not familiar with the exact</p> <p>22 accounting rules of what qualifies as subsequent</p> <p>23 event, but my expectation would be that material</p> <p>24 events that occurred after the end of the year</p> <p>25 would be disclosed in a section like this before</p>	<p>Page 182</p> <p>1 ALAN JOHNSON</p> <p>2 the financials came out.</p> <p>3 Q. If Mr. Dondero had entered into his</p> <p>4 forgiveness agreement in early 2019, would you</p> <p>5 have expected that agreement to have been</p> <p>6 disclosed in the subsequent event section of the</p> <p>7 audited financial report?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. As I said earlier, I would hope it</p> <p>10 would be – I would hope that it would be</p> <p>11 documented and I would hope that if it was – in</p> <p>12 this case, was significant, that it would have</p> <p>13 been informed and probably shown up in a section</p> <p>14 like this.</p> <p>15 Q. But you don't see it show up in a</p> <p>16 section like this, do you, sir?</p> <p>17 A. I don't see it here, no.</p> <p>18 MR. MORRIS: Can we go to the, I</p> <p>19 think, second or third page of the document?</p> <p>20 Yeah, the signature page, yeah.</p> <p>21 Q. Do you see that that's</p> <p>22 PricewaterhouseCoopers' signature on the audited</p> <p>23 financial report for the period ending</p> <p>24 December 31, 2018?</p> <p>25 A. You mean, '19 – nor '18 – I'm</p>
<p>1 ALAN JOHNSON</p> <p>2 sorry – yes, I see PwC.</p> <p>3 Q. Right.</p> <p>4 And do you see it's dated June 3,</p> <p>5 2019?</p> <p>6 A. Yes.</p> <p>7 Q. And is it your understanding that the</p> <p>8 subsequent event section covers the period</p> <p>9 January 1, 2019 until June 3, 2019?</p> <p>10 A. I'm not – again, I'm not an expert on</p> <p>11 exactly the timing of the subsequent events, but</p> <p>12 it – it would have – it covers some of the</p> <p>13 period – some or all the period before they</p> <p>14 issued. I don't know when they have a cutoff, but</p> <p>15 it covers certainly at period after the end of the</p> <p>16 year before these are finalized.</p> <p>17 Q. Okay. So just to shift gears – you</p> <p>18 can take this down, please.</p> <p>19 Just a few more questions and we will</p> <p>20 have a short break for lunch, and I hope I won't</p> <p>21 have a lot more after that, just to give you a</p> <p>22 sense of where we are.</p> <p>23 We just saw, based on the 2018 audited</p> <p>24 financials, that as of the end of that year,</p> <p>25 Mr. Dondero had loans outstanding of approximately</p>	<p>Page 184</p> <p>1 ALAN JOHNSON</p> <p>2 \$29.4 million, at least according to the audited</p> <p>3 financial statements, right?</p> <p>4 A. I think that's true from Highland. I</p> <p>5 don't know if that included the different</p> <p>6 affiliates, but I think that's an accurate figure</p> <p>7 from Highland.</p> <p>8 Q. And do you understand that Mr. Dondero</p> <p>9 has borrowed money from other affiliates as well?</p> <p>10 A. I believe that's true, yes.</p> <p>11 Q. Do you have any understanding of the</p> <p>12 magnitude of his borrowing from those affiliates?</p> <p>13 A. I believe in this case there's, I</p> <p>14 believe, something like 40 to \$50 million at</p> <p>15 stake, but I don't know the interplay of the</p> <p>16 different – the different amounts.</p> <p>17 Q. Just maybe I'm confused, but are you</p> <p>18 talking about the money loaned from Highland to</p> <p>19 affiliates or are you talking about money loaned</p> <p>20 from affiliates to Mr. Dondero?</p> <p>21 A. I – Mr. Dondero owes – that he owes,</p> <p>22 if I'm phrasing it correctly.</p> <p>23 Q. All right. Look, I don't want to</p> <p>24 confuse this, so let's try and keep this simple.</p> <p>25 We just saw in the 2018 audit report</p>
	<p>Page 185</p>

<p>Page 186</p> <p>1 ALAN JOHNSON</p> <p>2 that as of the end of the year, he personally had</p> <p>3 obligations to Highland of \$29.4 million, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 And there was nothing in the audited</p> <p>7 financial statements that suggested that any</p> <p>8 portion of that was subject to forgiveness,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay.</p> <p>12 And you're aware that Highland was a</p> <p>13 debtor in bankruptcy. Is that right?</p> <p>14 A. It went into bankruptcy. I don't</p> <p>15 recall the date of the filing, but it certainly</p> <p>16 went into bankruptcy.</p> <p>17 Q. Did you – did you – do you know –</p> <p>18 are you aware that it filed for bankruptcy in</p> <p>19 October of 2019.</p> <p>20 A. That's the time frame. That's what I</p> <p>21 believed, yes.</p> <p>22 Q. Just a few months after</p> <p>23 PricewaterhouseCoopers signed off on the 2018</p> <p>24 audit, right?</p> <p>25 A. Yes.</p>	<p>Page 187</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Do you know if Mr. Dondero or anyone</p> <p>3 acting on his behalf ever informed the bankruptcy</p> <p>4 court that some or all of the loans were subject</p> <p>5 to forgiveness?</p> <p>6 A. That, I don't know.</p> <p>7 Q. Did you – did you ask anybody?</p> <p>8 A. No.</p> <p>9 Q. If you were advising a client – if</p> <p>10 you were advising a debtor in bankruptcy – no –</p> <p>11 withdrawn.</p> <p>12 If you were advising the maker of</p> <p>13 certain notes that were held by a debtor in</p> <p>14 bankruptcy, would you advise that client to tell</p> <p>15 the Court of any agreements that existed that –</p> <p>16 pursuant to which the notes might be forgiven?</p> <p>17 MR. AIGEN: Objection, form.</p> <p>18 A. I would certainly – if it wasn't</p> <p>19 obvious already, I would have certainly advised</p> <p>20 the client to inform whoever if there are terms</p> <p>21 that would be favorable to them, absolutely.</p> <p>22 Q. And why would you do that?</p> <p>23 A. Well, if I was an executive or an</p> <p>24 entity that had forgiveness provisions that might</p> <p>25 benefit me and someone else who's not a banker or</p>
<p>Page 188</p> <p>1 ALAN JOHNSON</p> <p>2 bankruptcy judge wasn't aware of it, I would</p> <p>3 suggest that they inform them rapidly that these</p> <p>4 favorable provisions were in place.</p> <p>5 Q. Can you think of any reason why the</p> <p>6 executive wouldn't disclose the favorable</p> <p>7 provisions that were in place?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. Having seen some bankruptcies, I think</p> <p>10 people forget, people make bad decisions. In the</p> <p>11 chaotic situations that happen, people often</p> <p>12 ignore things. But I – the most logical one</p> <p>13 would be the confusion or chaos.</p> <p>14 Q. Let me give you a hypothetical:</p> <p>15 There's an executive who owes a bankrupt entity</p> <p>16 \$30 million in its individual capacity, and the</p> <p>17 debtor discloses in its disclosure statement and</p> <p>18 its plan of reorganization its intention to</p> <p>19 collect that \$30 million as part of its plan of</p> <p>20 reorganization.</p> <p>21 If the executive doesn't stand up and</p> <p>22 say, Hold your horses, I've got an agreement</p> <p>23 pursuant to which those notes might be forgiven,</p> <p>24 and only makes that disclosure after litigation is</p> <p>25 commenced, in your experience as an executive</p>	<p>Page 189</p> <p>1 ALAN JOHNSON</p> <p>2 compensation consultant, would you question</p> <p>3 whether there was really an agreement in the first</p> <p>4 place?</p> <p>5 MR. AIGEN: Objection, form.</p> <p>6 A. Of course I would question it, and I</p> <p>7 often question clients about decisions that I</p> <p>8 wished they hadn't made, but yeah, certainly, I</p> <p>9 would question it.</p> <p>10 Q. And what if you knew in the</p> <p>11 hypothetical that the individual was represented</p> <p>12 by multiple law firms, would that cause you to</p> <p>13 question it even further?</p> <p>14 MR. AIGEN: Objection, form.</p> <p>15 A. No, I would expect in a situation like</p> <p>16 that, he would be represented by a bunch of law</p> <p>17 firms, but I would certainly question that. It</p> <p>18 seems convenient. That doesn't mean it's not</p> <p>19 true, though, which I often find clients that make</p> <p>20 very unfortunate decisions, so – but I would</p> <p>21 certainly question it.</p> <p>22 Q. Okay. Just a few more questions</p> <p>23 before we break.</p> <p>24 So we spent a lot of time, and I</p> <p>25 really appreciate your patience, Mr. Johnson,</p>

<p>Page 190</p> <p>1 ALAN JOHNSON</p> <p>2 going through many of Highland's audited financial</p> <p>3 statements, but I just want to know, with the</p> <p>4 caveat that you're relying on only what I showed</p> <p>5 you, with that caveat, would you agree with me</p> <p>6 that based on our review Highland has not forgiven</p> <p>7 a loan to anyone in the world since around 2009?</p> <p>8 A. Yeah, that's what it appeared from the</p> <p>9 financials, I guess.</p> <p>10 The only thing that makes me pause is</p> <p>11 I'd want to look at the – again, the similar</p> <p>12 documents for the affiliates and see if there's</p> <p>13 stuff in there as well. But in the documents that</p> <p>14 you showed, that appeared to be, you know, what is</p> <p>15 recorded in these financials.</p> <p>16 Q. And Highland – the – Highland</p> <p>17 capital Management, L.P. is the only payee on the</p> <p>18 notes that you're aware of, correct?</p> <p>19 A. I believe so. I believe that's right.</p> <p>20 Q. And Highland Capital Management, L.P.</p> <p>21 was the only entity that was in bankruptcy. Is</p> <p>22 that right?</p> <p>23 A. I believe that's right.</p> <p>24 MR. AIGEN: Objection to form.</p> <p>25 Q. And you're not aware that Highland has</p>	<p>Page 191</p> <p>1 ALAN JOHNSON</p> <p>2 an ownership interest in any of the makers under</p> <p>3 any of the notes at issue here, correct?</p> <p>4 A. That, you're getting – I'm not sure I</p> <p>5 understand – ownership – that, I don't know.</p> <p>6 Q. Okay. Okay.</p> <p>7 But we can agree that, based at least</p> <p>8 on Highland's audited financial statements, you're</p> <p>9 comfortable concluding that Highland hasn't</p> <p>10 forgiven a loan to anybody or any entity since</p> <p>11 2009, correct?</p> <p>12 A. That's the only thing, and the things</p> <p>13 you showed me have been disclosed, that's right.</p> <p>14 Q. And based on what I showed you, you're</p> <p>15 comfortable in concluding that the largest loan</p> <p>16 that Highland ever forgave was \$500,000. Is that</p> <p>17 fair?</p> <p>18 A. That's what it appears, that's right.</p> <p>19 Q. Okay.</p> <p>20 And based on what I showed you, you're</p> <p>21 comfortable excluding that Highland has never</p> <p>22 forgiven a loan to Mr. Dondero, correct, or at</p> <p>23 least through 2008?</p> <p>24 A. And as reported in the financials,</p> <p>25 that appears to be correct, yes.</p>
<p>Page 192</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And based on the information that I've</p> <p>3 given you and the financials that we looked at,</p> <p>4 you're comfortable concluding that at no time</p> <p>5 since at least 2008 has Highland ever forgiven in</p> <p>6 whole or in part any loan that it ever extended to</p> <p>7 any affiliate, right?</p> <p>8 MR. AIGEN: Objection to form.</p> <p>9 A. That's – that's what's in the</p> <p>10 financials, yes.</p> <p>11 MR. MORRIS: Okay. So it's 1 o'clock.</p> <p>12 Let's break until 1:30. And I hope, you</p> <p>13 know, I have another 60 or 90 minutes.</p> <p>14 Thank you very much.</p> <p>15 (Luncheon recess taken from 1:02 p.m.</p> <p>16 until 1:32 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 193</p> <p>1 ALAN JOHNSON</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:32 p.m.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Good afternoon, Mr. Johnson.</p> <p>6 A. Hello.</p> <p>7 Q. Did you speak with anybody during the</p> <p>8 break about the substance of your testimony today?</p> <p>9 A. No.</p> <p>10 MR. MORRIS: Okay. I'd like to put up</p> <p>11 on the screen a document that has been</p> <p>12 premarked as Exhibit 70 – you know what, I</p> <p>13 apologize, not 70, 73.</p> <p>14 (Exhibit 73 Exhibit 73, Demonstrative,</p> <p>15 was marked for identification at this time.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Mr. Johnson, are you able to view the</p> <p>18 document that's been premarked as Exhibit 33</p> <p>19 that's up on the screen?</p> <p>20 A. Yes. Yes, I can.</p> <p>21 Q. So I'm going to represent to you that</p> <p>22 this is a – this is what we call a "demonstrative</p> <p>23 exhibit," right?</p> <p>24 This isn't a document that was</p> <p>25 prepared in the ordinary course of business. It's</p>

<p>Page 194</p> <p>1 ALAN JOHNSON</p> <p>2 a summary of other information that we've produced</p> <p>3 in this litigation, and I will represent to you</p> <p>4 that we have produced in this litigation, among</p> <p>5 other things, bank statements that show the</p> <p>6 transfer of money on behalf of Mr. Dondero against</p> <p>7 a couple of outstanding notes.</p> <p>8 And, you know, Mr. Dondero's counsel</p> <p>9 can, you know, take the documents that were</p> <p>10 produced with this to make sure that it's</p> <p>11 accurate, but I believe it to be accurate, and I</p> <p>12 just want to ask you some questions about this –</p> <p>13 about the information that's contained in this</p> <p>14 document.</p> <p>15 I assume you've never seen this</p> <p>16 before, right?</p> <p>17 A. I don't – I may have seen something</p> <p>18 similar. I don't believe I've seen this exact</p> <p>19 thing, no.</p> <p>20 Q. Were you – do you remember before we</p> <p>21 looked back and there was that \$14.9 million loan</p> <p>22 that was reflected in the – in the financials?</p> <p>23 A. Yes.</p> <p>24 Q. And I'll represent to you that's</p> <p>25 what's the restructured note in Column C and D.</p>	<p>Page 195</p> <p>1 ALAN JOHNSON</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 And do you recall from the financials</p> <p>6 that in 2018, Mr. Dondero had borrowed an</p> <p>7 additional \$14 million and change?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 I'll represent to you that the</p> <p>11 January 18, 2018 note in the principal amount of</p> <p>12 \$7.9 million was among the new loans that he</p> <p>13 obtained in 2018.</p> <p>14 Were you ever informed that in 2017,</p> <p>15 '18, and '19, Mr. Dondero was making payments of</p> <p>16 principal and interest due on loans that he had</p> <p>17 obtained from Highland?</p> <p>18 A. I don't think I discussed that with</p> <p>19 anybody. I think I had noticed that – these loan</p> <p>20 amounts changing around, that something was going</p> <p>21 on in terms of payment, but I don't think I</p> <p>22 discussed that with anybody.</p> <p>23 Q. Before completing your report, would</p> <p>24 you have liked to have known about Mr. Dondero's</p> <p>25 payment history, if any?</p>
<p>Page 196</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yeah, that would have been something I</p> <p>3 would have liked to have known, yes.</p> <p>4 Q. Because that would relate to the whole</p> <p>5 concept of whether or not there was a prior course</p> <p>6 of forgiveness. Is that right?</p> <p>7 A. I would – yeah, that would have</p> <p>8 been – that would have been helpful to know.</p> <p>9 Q. I mean, it's – you wouldn't dispute</p> <p>10 that if, in fact, this chart is correct and</p> <p>11 Mr. Dondero was making payments in 2017, '18, and</p> <p>12 '19 against those notes, that those notes were not</p> <p>13 likely to be subject to any forgiveness agreement,</p> <p>14 correct?</p> <p>15 MR. AIGEN: Objection, form.</p> <p>16 A. As I testified before, you could have</p> <p>17 a loan forgiveness that you would make payments</p> <p>18 on. It really would depend on the circumstances</p> <p>19 and what you thought the probability of the</p> <p>20 forgiveness happening, but answering your</p> <p>21 question, yes, I would have liked to have known</p> <p>22 about this.</p> <p>23 Q. According to this chart, if you just</p> <p>24 focus – you see the Column G, "Total Received in</p> <p>25 Respect of Retired Notes"?</p>	<p>Page 197</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 And do you see the total is</p> <p>5 approximately \$23.7 million?</p> <p>6 A. Yes.</p> <p>7 Q. If you exclude the first three</p> <p>8 payments that were made in 2017 and '18, they</p> <p>9 total about \$3.3 million or \$3.4 million.</p> <p>10 Is my math roughly correct?</p> <p>11 A. Yes, it looks that way.</p> <p>12 Q. Okay.</p> <p>13 So is it fair then to just – if you</p> <p>14 deduct that from the total, to say that</p> <p>15 Mr. Dondero made principal and interest payments</p> <p>16 against those two notes in 2019 in excess of</p> <p>17 \$20 million?</p> <p>18 A. That looks correct, yes.</p> <p>19 Q. Okay.</p> <p>20 Now, do you see the last payment was</p> <p>21 made, if you look at the Row 16, on December 23,</p> <p>22 2019?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 And do you understand that that's</p>



<p>1 ALAN JOHNSON</p> <p>2 after the petition date?</p> <p>3 A. Yes, that would be.</p> <p>4 Q. And according to this chart anyway, in</p> <p>5 Column B, the payment that was made on that date</p> <p>6 was approximately \$783,000?</p> <p>7 A. Yes.</p> <p>8 Q. And that money was applied to</p> <p>9 outstanding principal and interest that was due</p> <p>10 under the January 18, 2018 note.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 And do you see how the principal</p> <p>15 balance of \$7.9 million was paid exactly as of</p> <p>16 December 23, 2019?</p> <p>17 A. I'm sorry, I don't understand. The</p> <p>18 7.9 was –</p> <p>19 Q. Was the principal amount of the note,</p> <p>20 right?</p> <p>21 And I'll represent to you that the</p> <p>22 January '18 note was given by Mr. Dondero to</p> <p>23 Highland in exchange for 17. – for a \$7.9 million</p> <p>24 loan on the same day. Okay?</p> <p>25 A. Okay.</p>	<p>Page 198</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And do you see in Column G, it shows</p> <p>3 that once the portion of the payment was applied</p> <p>4 to the January 2018 note, the total that was</p> <p>5 applied was about 319,000 and change?</p> <p>6 A. Yes. Okay.</p> <p>7 Q. And then there's an asterisk in</p> <p>8 Column H next to that total received on that date.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And if you look at the footnote, it</p> <p>13 says the difference between the total paid on</p> <p>14 December 23, 2019 and the amount applied to the</p> <p>15 January 18, 2018 note was applied in three</p> <p>16 different ways.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that it was applied</p> <p>20 against principal and interest due on three other</p> <p>21 notes that Mr. Dondero took in 2018?</p> <p>22 A. Yes.</p> <p>23 Q. Were you aware, until I showed you</p> <p>24 this, that Mr. Dondero had made payments of</p> <p>25 principal and interest against the notes that he</p>
<p>1 ALAN JOHNSON</p> <p>2 contends are subject to the forgiveness agreement?</p> <p>3 A. I don't think I was aware of that.</p> <p>4 Q. Is that a fact that you would have</p> <p>5 liked to have known before you completed your</p> <p>6 report?</p> <p>7 A. I would have probably liked to have</p> <p>8 known that, yes.</p> <p>9 Q. And why is that?</p> <p>10 A. The statement I made in the report</p> <p>11 around the practice of the company to forgive</p> <p>12 loans, I would have had to perhaps rethought that.</p> <p>13 This would have been – this would have been</p> <p>14 information that I would have liked to have known,</p> <p>15 yes.</p> <p>16 Q. In fact, this page shows that, you</p> <p>17 know, if we exclude the payment made in late 2017,</p> <p>18 from December 2018 to December 2019, Mr. Dondero</p> <p>19 paid approximately \$23-and-a-half million again</p> <p>20 principal and interest due on 5 different notes.</p> <p>21 Have I characterized that fairly based</p> <p>22 on this chart?</p> <p>23 A. I think you may have double counted in</p> <p>24 your arithmetic, but the point is he made</p> <p>25 significant payments against principal and</p>	<p>Page 200</p> <p>1 ALAN JOHNSON</p> <p>2 interest.</p> <p>3 Q. Okay. I don't want to double count.</p> <p>4 Let me try and do it again.</p> <p>5 Do you see the total Dondero payment</p> <p>6 amount in Column B is \$24.143 million.</p> <p>7 A. Yes.</p> <p>8 Q. If we simply deduct from that</p> <p>9 \$677,000, do you come out to roughly</p> <p>10 \$23-and-a-half million?</p> <p>11 A. Yes, that's right. That's right.</p> <p>12 Q. And that \$23-and-a-half million was</p> <p>13 paid in the 370-day period between December 18,</p> <p>14 2018 and December 23, 2019, correct?</p> <p>15 A. I don't want to be a stickler here,</p> <p>16 but if you look to the payment amount of</p> <p>17 24 million, I think you were trying to say that</p> <p>18 the end of '18-'19, so you'd subtract those first</p> <p>19 three payments in that Column B, I think, which</p> <p>20 gets you to about \$20 million.</p> <p>21 So it looks like in '19 – it's north</p> <p>22 of \$20 million.</p> <p>23 Q. Okay.</p> <p>24 And if we add the payments that were</p> <p>25 made on December 18, 2018 and December 19, 2018,</p>
<p>Page 201</p>	<p>Page 201</p>

<p>Page 202</p> <p>1 ALAN JOHNSON</p> <p>2 you come up with about 23 to \$23-and-a-half</p> <p>3 million, right?</p> <p>4 A. Something like that, that's right.</p> <p>5 Q. And that's about a one-year period</p> <p>6 that straddles the petition date, to the best of</p> <p>7 your knowledge, right?</p> <p>8 A. Yes. Yes, it does.</p> <p>9 Q. And so those payments, according to</p> <p>10 this chart – and, again, I'm asking you to assume</p> <p>11 the accuracy of this chart – according to this</p> <p>12 chart, for the approximately one-year period from</p> <p>13 December 2018 to December 2019, Mr. Dondero made</p> <p>14 principal and interest payments of approximately</p> <p>15 23 to \$23-and-a-half million against 5 different</p> <p>16 promissory notes that were held by Highland,</p> <p>17 correct?</p> <p>18 A. Yes, I believe that's true.</p> <p>19 Q. And is it fair to say that that</p> <p>20 information conflicts with the concept of Highland</p> <p>21 having a practice of forgiving loans?</p> <p>22 MR. AIGEN: Objection, form.</p> <p>23 A. Well, as I said earlier, it doesn't</p> <p>24 mean that the loans weren't forgivable. It means</p> <p>25 he made payments against loans that may have been</p>	<p>Page 203</p> <p>1 ALAN JOHNSON</p> <p>2 subject to a – you know, a forgiveness agreement,</p> <p>3 which, as I testified earlier, you know, could</p> <p>4 happen, but it would certainly be a fact you'd</p> <p>5 want to – you know, you'd want to consider.</p> <p>6 Q. And tell me the understanding – your</p> <p>7 opinion as to the circumstances under which you</p> <p>8 think a maker under notes would rationally make a</p> <p>9 payment of principal and interest against notes</p> <p>10 that were the subject of a forgiveness agreement?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. Well, I think, as I testified earlier,</p> <p>13 I think someone would think to themselves, what is</p> <p>14 the likelihood of those notes being forgiven?</p> <p>15 If they believe they're not likely to</p> <p>16 be forgiven, and if they're a senior executive of</p> <p>17 the company and the company perhaps needs the</p> <p>18 money, they might make those payments. A rational</p> <p>19 executive or borrower could make those payments</p> <p>20 believing that, perhaps, the likelihood of the</p> <p>21 things being forgiven is not high and/or the</p> <p>22 company needs the money.</p> <p>23 Q. Did – did anybody give you any</p> <p>24 explanation as to why Mr. Dondero made</p> <p>25 approximately \$23-and-a-half million of payments</p>
<p>Page 204</p> <p>1 ALAN JOHNSON</p> <p>2 against premium – against principal and interest</p> <p>3 due on these 5 notes?</p> <p>4 A. No, they did not.</p> <p>5 Q. To the best of your knowledge and</p> <p>6 understanding was Mr. Dondero in control of</p> <p>7 Highland throughout that period December 2018</p> <p>8 until the end of 2019?</p> <p>9 A. I'm not – I'm not sure about what</p> <p>10 happened in bankruptcy, but certainly from the</p> <p>11 period up until the filing of the bankruptcy, he</p> <p>12 was in control.</p> <p>13 Q. Okay.</p> <p>14 Do you know – if you look at the</p> <p>15 restructure note, the January 18, 2018 note, and</p> <p>16 the notes that are referred to in Rows 21, 22, and</p> <p>17 23, are you able to identify which of them, if</p> <p>18 any, are subject to the modification agreement</p> <p>19 described in your report?</p> <p>20 A. I cannot identify them, no.</p> <p>21 Q. So you don't know which, if any, were</p> <p>22 the subject – were subject to the agreement.</p> <p>23 Do I have that right?</p> <p>24 A. I can't identify them, no.</p> <p>25 MR. MORRIS: Okay. Can we go back to</p>	<p>Page 205</p> <p>1 ALAN JOHNSON</p> <p>2 Mr. Johnson's report, Exhibit 62?</p> <p>3 And if we can go to page 3, please.</p> <p>4 Q. This is the introduction of your</p> <p>5 report, right?</p> <p>6 A. Yes.</p> <p>7 Q. And now that we've done the work we</p> <p>8 have so far today, I'm going to point you to the</p> <p>9 sentence towards the end of the first paragraph</p> <p>10 that says, "Throughout this period, he received</p> <p>11 loans in lieu of additional current compensation."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And the "he" there refers to</p> <p>15 Mr. Dondero, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Knowing what you know now, do you</p> <p>18 stand by that statement?</p> <p>19 MR. AIGEN: Objection, form.</p> <p>20 MR. MORRIS: Withdrawn.</p> <p>21 Q. Knowing what you know now, do you</p> <p>22 believe that statement is accurate?</p> <p>23 A. I'd have to rethink about it. I</p> <p>24 haven't heard anything that would say what he told</p> <p>25 me was not true.</p>

<p>1 ALAN JOHNSON</p> <p>2 Q. Have you seen any evidence that</p> <p>3 Mr. Dondero ever received a loan in lieu of</p> <p>4 additional current compensation?</p> <p>5 A. Besides his – his assertions to me,</p> <p>6 I've seen no written documentation, no.</p> <p>7 Q. And, in fact, the audited financial</p> <p>8 statements that we looked at did, in fact,</p> <p>9 disclose the loans that were forgiven to the</p> <p>10 individuals that you spoke with, correct?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. Yes.</p> <p>13 Q. There was nothing in any of the</p> <p>14 audited financial statements that we saw that</p> <p>15 showed that any loan was ever given to Mr. Dondero</p> <p>16 that was forgiven, correct?</p> <p>17 A. In the Highland financials we looked</p> <p>18 at – and I guess when that was asked before, I</p> <p>19 had the caveat around the affiliated companies,</p> <p>20 but in the Highland financials that we went</p> <p>21 through, there was nothing disclosed of that.</p> <p>22 Q. Highland – does the practice of other</p> <p>23 entities in terms – is that – withdrawn.</p> <p>24 When you described the practice, are</p> <p>25 you describing the practice of firms or entities</p>	<p>Page 206</p> <p>1 ALAN JOHNSON</p> <p>2 or affiliates other than Highland?</p> <p>3 A. Well, I – in this case, everything is</p> <p>4 kind of inter – intertwined here, so when I talk</p> <p>5 about loans, the loan could have potentially come</p> <p>6 from an affiliate or some other organization since</p> <p>7 these all were co-owned.</p> <p>8 So we went through the Highland thing,</p> <p>9 so the loans to Mr. Dondero could have been made</p> <p>10 by – potentially could have been made by an</p> <p>11 affiliate or some other entity.</p> <p>12 Q. Do you have knowledge of any affiliate</p> <p>13 ever forgiving any loan to Mr. Dondero?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have knowledge of any affiliate</p> <p>16 ever forgiving in whole or in part any loan to</p> <p>17 anyone in the world?</p> <p>18 MR. AIGEN: Objection, form.</p> <p>19 A. I – I don't have any knowledge of</p> <p>20 that either.</p> <p>21 Q. And your report does not depend in any</p> <p>22 way, sir, on whether or not affiliates forgave</p> <p>23 loans to any of its employees, correct?</p> <p>24 MR. AIGEN: Objection to form.</p> <p>25 A. That's correct.</p> <p>Page 207</p>
<p>1 ALAN JOHNSON</p> <p>2 Q. Looking at the last sentence, there's</p> <p>3 a reference to company practice.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. That company practice would not</p> <p>7 include the forgiveness of any loans from the year</p> <p>8 2009 until the end of 2018, correct?</p> <p>9 A. None – none of those would have</p> <p>10 been – none of those were disclosed in the</p> <p>11 financials we looked at.</p> <p>12 MR. MORRIS: Can we go to page 6,</p> <p>13 please?</p> <p>14 Q. Yeah, I'm looking at the first</p> <p>15 sentence of the second bullet point: I understand</p> <p>16 from Mr. Dondero that the 2018 loans that are the</p> <p>17 subject of the suit were modified by an agreement</p> <p>18 in late 2018 or early 2019 under which the loans</p> <p>19 would be forgiven upon the sale and over cost of</p> <p>20 substantially of any of three portfolio companies.</p> <p>21 Have I generally categorized that</p> <p>22 statement correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Based on everything that we've talked</p> <p>25 about and looked at today, are you confident that</p> <p>Page 208</p>	<p>1 ALAN JOHNSON</p> <p>2 that sentence is accurate?</p> <p>3 Withdrawn.</p> <p>4 Based on everything we've talked about</p> <p>5 and looked at today, are you confident that</p> <p>6 Mr. Dondero accurately disclosed to you the</p> <p>7 subject of this agreement?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. I'm sorry, could you repeat that?</p> <p>10 Q. Sure.</p> <p>11 Mr. Dondero told you that the 2018</p> <p>12 loans were the subject of a modification</p> <p>13 agreement, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Would you stake your professional</p> <p>16 reputation on the accuracy of what he told you?</p> <p>17 MR. AIGEN: Objection, form.</p> <p>18 A. I – I heard him clearly. I can't</p> <p>19 vouch for his word, but he told me – what is</p> <p>20 written there is what – is what he told me</p> <p>21 happened. And I asked that question.</p> <p>22 Q. I appreciate that.</p> <p>23 So –</p> <p>24 A. I wasn't finished. I'm sorry.</p> <p>25 Q. I apologize.</p> <p>Page 209</p>

<p>Page 210</p> <p>1 ALAN JOHNSON</p> <p>2 A. So I asked that question, you know,</p> <p>3 pretty specifically, so that – I understood that</p> <p>4 that's what he said.</p> <p>5 And I'm sorry to interrupt you. I'm</p> <p>6 sorry. Go ahead.</p> <p>7 Q. That's okay.</p> <p>8 So what you've reported in this</p> <p>9 sentence is what you were told. Is that fair?</p> <p>10 A. Yes, I was told by Mr. Dondero about</p> <p>11 the modification of the loans.</p> <p>12 Q. And you don't have any information or</p> <p>13 evidence to support that statement other than what</p> <p>14 he told you, correct?</p> <p>15 A. I've seen no other document, no.</p> <p>16 Q. Does the absence of documentation</p> <p>17 cause you to question the reliability of what</p> <p>18 Mr. Dondero told you as described in that</p> <p>19 sentence?</p> <p>20 A. Well, as I testified before, I think</p> <p>21 it certainly would bring it into question, but as</p> <p>22 I testified before, I have other clients that</p> <p>23 don't document important things as well. So it</p> <p>24 would certainly – not the lack of documentation</p> <p>25 would bring it into question, but that doesn't</p>	<p>Page 211</p> <p>1 ALAN JOHNSON</p> <p>2 mean it's not – it's not true.</p> <p>3 Q. Would the lack of disclosure to the</p> <p>4 bankruptcy also call it into question –</p> <p>5 MR. AIGEN: Objection to form.</p> <p>6 Q. – in your opinion?</p> <p>7 A. Certainly, as I testified before,</p> <p>8 people often in chaotic situations don't do the</p> <p>9 things that are even to their advantage.</p> <p>10 So certainly that raised – that</p> <p>11 raises questions about, again, did he disclose</p> <p>12 things that may have been even to his advantage in</p> <p>13 a bankruptcy situation.</p> <p>14 Q. Would the existence of the agreement</p> <p>15 be called into question if you assumed that the</p> <p>16 decision maker never told anybody in the world</p> <p>17 that he or she had entered into the agreement on</p> <p>18 behalf of the company?</p> <p>19 MR. AIGEN: Objection, form.</p> <p>20 A. Certainly. The lack of disclosure is</p> <p>21 a reasonable question to ask, Why didn't you</p> <p>22 disclose?</p> <p>23 But as I've said a couple times now,</p> <p>24 that I've got private clients that over time have</p> <p>25 not disclosed things, and as I testified earlier,</p>
<p>Page 212</p> <p>1 ALAN JOHNSON</p> <p>2 I admonish them to write things down and disclose</p> <p>3 them, and they often don't.</p> <p>4 Q. Looking back at the document on the</p> <p>5 screen, the next-to-the-last sentence of that</p> <p>6 paragraph says, "Based on interviews from prior</p> <p>7 employees, the use of forgivable loans was a known</p> <p>8 business practice at Highland, and there was a</p> <p>9 clear expectation similar loans would be</p> <p>10 forgiven."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 The prior employees are the four</p> <p>15 people we talked about before, right?</p> <p>16 A. Yes.</p> <p>17 Q. And they told you about the four loans</p> <p>18 that they had that were forgiven in whole or in</p> <p>19 part, correct?</p> <p>20 A. And I would answer that, yes, they</p> <p>21 said it, and Mr. Dondero mentioned it as well.</p> <p>22 Q. And they told that there was a use of</p> <p>23 forgivable loans as a nonbusiness practice at</p> <p>24 Highland, right?</p> <p>25 A. Yes.</p>	<p>Page 213</p> <p>1 ALAN JOHNSON</p> <p>2 Q. They didn't mention any other entity,</p> <p>3 correct?</p> <p>4 A. That, I don't remember. I don't</p> <p>5 believe so.</p> <p>6 Q. You wrote Highland, right?</p> <p>7 A. Yes.</p> <p>8 Q. And you haven't seen any documents</p> <p>9 that support the known business practice that they</p> <p>10 described for you, correct?</p> <p>11 A. I have seen no written documentation,</p> <p>12 no.</p> <p>13 Q. When you referred to a "clear</p> <p>14 expectation," whose expectation are you referring</p> <p>15 to?</p> <p>16 A. The recipient of the loan, that's what</p> <p>17 I was referring to.</p> <p>18 Q. And when you used the phrase "similar</p> <p>19 loans," do you mean similar to the ones that were</p> <p>20 forgiven by the four employees – the four former</p> <p>21 employees that you interviewed?</p> <p>22 A. I meant just that there was a loan of</p> <p>23 a significant period of time and it would be</p> <p>24 forgiven over time. That's what I was trying to</p> <p>25 get at there.</p>

<p>Page 214</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Now that you have seen – withdrawn.</p> <p>3 Now that I have shown you the</p> <p>4 demonstrative exhibit that reflects payments by</p> <p>5 Mr. Dondero against 5 different promissory notes</p> <p>6 in the 12-month period between December '18 and</p> <p>7 December '19, do you believe that he had a clear</p> <p>8 expectation that his loans would be forgiven?</p> <p>9 MR. AIGEN: Objection, form.</p> <p>10 A. I – I don't – I don't – he hasn't</p> <p>11 told me what his expectation – I don't – I would</p> <p>12 just be speculating about what his expectations</p> <p>13 were.</p> <p>14 Q. Well, paying – paying more than</p> <p>15 \$23 million in a 12-month period is inconsistent</p> <p>16 with any expectation that the loans would be</p> <p>17 forgiven.</p> <p>18 Would you give me that?</p> <p>19 MR. AIGEN: Objection, form.</p> <p>20 A. Well, I think I testified before that</p> <p>21 you could forgive – you could make payments</p> <p>22 against the loan if you thought the probability of</p> <p>23 achieving the goals were not highly likely and/or</p> <p>24 the company needed the money.</p> <p>25 So on a private situation, such as</p>	<p>Page 215</p> <p>1 ALAN JOHNSON</p> <p>2 this, Mr. Dondero rationally could have said to</p> <p>3 himself, I'll repay the loans because the company</p> <p>4 needs the money and/or the odds of selling one of</p> <p>5 these three assets in a reasonably timely manner</p> <p>6 may be unlikely, but I'm just speculating on what</p> <p>7 he – he may have thought.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Can we go to page 16,</p> <p>10 please?</p> <p>11 Q. Just to finish this up, in the middle,</p> <p>12 it says, "It is my opinion that the loans provided</p> <p>13 to Mr. Dondero should be considered potential</p> <p>14 deferred compensation as they were similar to</p> <p>15 loans given to other professionals at the firm."</p> <p>16 Have I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. After our questions today and looking</p> <p>19 at the documents is that still your opinion?</p> <p>20 A. Well, I think it goes back to what</p> <p>21 Mr. Dondero told me. If what Mr. Dondero told me</p> <p>22 is accurate, it – his statement continues to be</p> <p>23 true, that these loans were intended to be</p> <p>24 forgiven, and that that would have been similar to</p> <p>25 the other four executives that I interviewed.</p>
<p>Page 216</p> <p>1 ALAN JOHNSON</p> <p>2 Q. So that sentence and your opinion is</p> <p>3 dependent 100 percent on the accuracy of what</p> <p>4 Mr. Dondero told you, correct?</p> <p>5 A. If Mr. Dondero, you know, was</p> <p>6 inaccurate, then that sentence will be inaccurate</p> <p>7 as well.</p> <p>8 Q. And is there anything that we looked</p> <p>9 at today, like the financial statements or the</p> <p>10 payment history for the 12-month period from</p> <p>11 December 2018 to December 2019, that calls you to</p> <p>12 question the accuracy of what he told you?</p> <p>13 A. I don't – I don't – I believe it</p> <p>14 still could very well be true, so I don't – I</p> <p>15 don't – I don't believe that – I don't believe I</p> <p>16 would have changed that sentence based on what</p> <p>17 I've heard today.</p> <p>18 Q. Your report refers in several places</p> <p>19 to a founder's premium.</p> <p>20 Do I have that phrased right?</p> <p>21 A. Yes. Yes, it does.</p> <p>22 Q. What's a founder's premium?</p> <p>23 A. In many or most financial services</p> <p>24 companies, founders get paid more than comparable</p> <p>25 executives elsewhere. They're the face of the</p>	<p>Page 217</p> <p>1 ALAN JOHNSON</p> <p>2 firm. They have an unusual stature in the</p> <p>3 industry and so forth.</p> <p>4 So when you look at large or outsized</p> <p>5 pay packages, they're often delivered to founders</p> <p>6 of similar financial firms.</p> <p>7 Q. Have you done any analysis to</p> <p>8 determine what the founder's premium would be in</p> <p>9 this case?</p> <p>10 A. I have not.</p> <p>11 Q. You're not offering any opinion as to</p> <p>12 what the founder's premium should be, correct?</p> <p>13 A. I have not done that work, no.</p> <p>14 Q. You haven't attempted to quantify what</p> <p>15 the founder's premium is, correct?</p> <p>16 A. Again, I haven't done that work.</p> <p>17 Q. Is there a particular reason why you</p> <p>18 didn't attempt to quantify or analyze the</p> <p>19 founder's premium that you referred to in your</p> <p>20 report?</p> <p>21 A. Well, when I wrote the report in May,</p> <p>22 I didn't have available some of the things we've</p> <p>23 talked about today, I just didn't feel that that</p> <p>24 was appropriate.</p> <p>25 So I took what I thought was a</p>



<p>Page 218</p> <p>1 ALAN JOHNSON</p> <p>2 conservative view of what the market rate with him</p> <p>3 would be, and then it could obviously be</p> <p>4 supplemented at some future point with additional</p> <p>5 information or facts.</p> <p>6 Q. But as you sit here today, you haven't</p> <p>7 done any analysis to try to update your report to</p> <p>8 quantify a founder's premium, correct?</p> <p>9 A. I have not.</p> <p>10 MR. MORRIS: Can we go to page 19 of</p> <p>11 Mr. Johnson's report.</p> <p>12 Q. Right there at the top, you've got</p> <p>13 Exhibit C. That's Mr. Dondero's actual</p> <p>14 compensation for the period 2013 to 2019.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Why did you use that seven-year</p> <p>18 period?</p> <p>19 A. It was after the financial crisis. It</p> <p>20 seemed more stability in the business. It seemed</p> <p>21 like a reasonable period to look at.</p> <p>22 Q. Is there any – is the decision to use</p> <p>23 the seven-year period from 2018 to 2019 a</p> <p>24 subjective decision that you made on your own?</p> <p>25 A. To be – I don't remember.</p>	<p>Page 219</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Is it fair to say that somebody else</p> <p>3 might differ with you and apply either a 4-year</p> <p>4 period, for example, or a 10-year period?</p> <p>5 A. Reasonable people might have a</p> <p>6 different point of view, yes.</p> <p>7 Q. Did you rely on any particular</p> <p>8 methodology or industry study in reaching your</p> <p>9 decision to use a seven-year period?</p> <p>10 A. No.</p> <p>11 Q. Is there any article that you're aware</p> <p>12 of or any presentation anybody has ever made</p> <p>13 whereby they – they suggested that when doing an</p> <p>14 analysis of this type, one ought to use a</p> <p>15 seven-year look-back period?</p> <p>16 A. I – I don't – I'm not aware of</p> <p>17 any – any study like that.</p> <p>18 Q. And the reason that the timeline is</p> <p>19 important, of course, is it because you're just</p> <p>20 multiplying the difference between Mr. Dondero's</p> <p>21 compensation as reflected in this chart –</p> <p>22 withdrawn.</p> <p>23 The reason why the time period is</p> <p>24 important, because you're taking the average of</p> <p>25 Mr. Dondero's annual compensation during the</p>
<p>Page 220</p> <p>1 ALAN JOHNSON</p> <p>2 seven-year period and comparing it with the</p> <p>3 average for your comps and multiplying it by</p> <p>4 seven, correct?</p> <p>5 A. Well, I'm looking at his average pay</p> <p>6 over the period. I wanted a long enough period to</p> <p>7 be representative and looking at what the market</p> <p>8 rate would have been over that period, so yes, you</p> <p>9 arithmetically will come up with a difference over</p> <p>10 that period.</p> <p>11 Q. And your difference is \$21 million,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And your difference is \$21 million</p> <p>15 because you compared Mr. Dondero's average of</p> <p>16 \$3 million with what you determined to be the</p> <p>17 industry average of \$6 million, you took the</p> <p>18 difference of 3 and multiplied it by the 7 years</p> <p>19 and you got to \$21 million, correct?</p> <p>20 A. In simple fashion, that's right.</p> <p>21 Q. Is there any other fashion in which my</p> <p>22 description of what you did is incorrect?</p> <p>23 A. No. I think that's accurate, but the</p> <p>24 point was that he had been underpaid from a W-2</p> <p>25 perspective during this period and, you know,</p>	<p>Page 221</p> <p>1 ALAN JOHNSON</p> <p>2 the – anyway, that was the point.</p> <p>3 Q. And if a reasonable mind decided that,</p> <p>4 you know, the look-back period should be a bit</p> <p>5 shorter, only 5 years, then the delta would only</p> <p>6 be \$15 million, right?</p> <p>7 A. Assuming the same facts, the 3 million</p> <p>8 and the 6 million, that's right.</p> <p>9 Q. And if somebody thought it ought to be</p> <p>10 10 years, then the delta would be \$30 million,</p> <p>11 right?</p> <p>12 A. It could be, but I don't know what his</p> <p>13 pay was prior to 2013. Maybe that wouldn't be</p> <p>14 accurate. But yes, assuming the facts are the</p> <p>15 same, that would be – that would be accurate.</p> <p>16 Q. Okay. But one of the three factors –</p> <p>17 so there are 3 factors in the \$21 million. It's</p> <p>18 Mr. Dondero's average compensation during the</p> <p>19 7-year period, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it's the industry average as</p> <p>22 you've determined for the seven-year period,</p> <p>23 correct?</p> <p>24 A. Well, just to be picky, it's not the</p> <p>25 industry average. It's what I think the market</p>

<p>Page 222</p> <p>1 ALAN JOHNSON</p> <p>2 was for his particular role, which was 6 million,</p> <p>3 but yes, it's 3 million and 6 million.</p> <p>4 Q. Thank you. Thank you for the</p> <p>5 clarification.</p> <p>6 And then the third factor in reaching</p> <p>7 the \$21 million is multiplying the difference</p> <p>8 between those first two numbers by 7, correct?</p> <p>9 A. Exactly.</p> <p>10 Q. And you determined to use 7, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you made that determination based</p> <p>13 on your subjective judgment, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you're not aware of any – any</p> <p>16 guideline, any analysis, any peer-reviewed</p> <p>17 article, any presentation, anything in the world</p> <p>18 that caused you to select 7 years. You just based</p> <p>19 that on your own experience. Is that fair?</p> <p>20 A. That's fair.</p> <p>21 Q. Okay.</p> <p>22 So if you look at the chart, you've</p> <p>23 got three different line items. The first is</p> <p>24 "Highland Capital Management W-2 Income," correct?</p> <p>25 A. Yes.</p>	<p>Page 223</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 And why did you decide that this</p> <p>4 analysis should incorporate Mr. Dondero's Highland</p> <p>5 Capital Management W-2 income?</p> <p>6 A. That is his reported employee</p> <p>7 compensation.</p> <p>8 Q. The next line relates to NexPoint</p> <p>9 Residential Trust W-2 income.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. You've only included income for 2018.</p> <p>13 Do I have that right?</p> <p>14 A. That's right.</p> <p>15 Q. Why did you decide that it was</p> <p>16 appropriate to include NexPoint Residential Trust</p> <p>17 W-2 income in your analysis?</p> <p>18 A. It was a W-2. I think he was paid as</p> <p>19 an employee, and that should be recognized here.</p> <p>20 Q. And how come you only disclosed the</p> <p>21 income for 2018?</p> <p>22 A. That's the only one we have W-2 for.</p> <p>23 Q. Okay.</p> <p>24 How about NexPoint Advisors' W-2</p> <p>25 income, why did you decide to include that in this</p>
<p>Page 224</p> <p>1 ALAN JOHNSON</p> <p>2 analysis?</p> <p>3 A. Again, it was employee income.</p> <p>4 These businesses are so intertwined</p> <p>5 that I included his pay for, you now, his</p> <p>6 activities at NexPoint.</p> <p>7 Q. Okay.</p> <p>8 And did you not go back prior to 2016</p> <p>9 because you didn't have any W-2 income for that</p> <p>10 entity?</p> <p>11 A. Didn't have a W-2 income.</p> <p>12 Q. Do you know if Mr. Dondero received</p> <p>13 any other W-2 income from any other</p> <p>14 Highland-related affiliate?</p> <p>15 A. We were not – I was not aware that</p> <p>16 there was any others.</p> <p>17 Q. If you were aware of other W-2 income</p> <p>18 that Mr. Dondero received from a Highland</p> <p>19 affiliate, would you have included it in this</p> <p>20 analysis?</p> <p>21 A. I would have included it, yes.</p> <p>22 MR. MORRIS: Okay. Let's go down to</p> <p>23 page 21, and if we can go to the bottom of</p> <p>24 the page.</p> <p>25 Q. All right. So correct me if I'm wrong</p>	<p>Page 225</p> <p>1 ALAN JOHNSON</p> <p>2 here, but what I think you did is you went and did</p> <p>3 some research and you tried to identify executives</p> <p>4 who had similar responsibilities to Mr. Dondero –</p> <p>5 Mr. Dondero and you reviewed what information was</p> <p>6 in the public domain to try to ascertain what</p> <p>7 their total compensation was for each of the years</p> <p>8 2013 through 2019.</p> <p>9 Is that generally correct?</p> <p>10 A. Yes, that's generally correct.</p> <p>11 Q. And looking at this chart, this chart</p> <p>12 at the bottom of page 21 only relates to 2019.</p> <p>13 Do I have that right?</p> <p>14 A. Yes.</p> <p>15 Q. And you have one, two, three, four,</p> <p>16 five, six, seven comps.</p> <p>17 Do I have that right?</p> <p>18 A. Yes.</p> <p>19 Q. And the first portion of the analysis</p> <p>20 shows the total base salary cash bonus for the</p> <p>21 total amount of total cash that was paid to each</p> <p>22 executive by their employer in 2019. Is that</p> <p>23 right?</p> <p>24 A. That's right.</p> <p>25 Q. Now, Mr. Dondero received</p>

<p>Page 226</p> <p>1 ALAN JOHNSON</p> <p>2 substantially more cash than any of these</p> <p>3 executives in 2019, correct?</p> <p>4 A. I don't recall his actual cash in</p> <p>5 2019. That, I don't know, sitting here.</p> <p>6 Q. And then the next part of the analysis</p> <p>7 relates to stock options and restricted shares.</p> <p>8 Let's take them one at a time.</p> <p>9 What are stock options for purposes of</p> <p>10 your analysis?</p> <p>11 A. It's the value of a – of an award</p> <p>12 made, and this is their disclosed value of the</p> <p>13 ability to exercise a – a – an option to</p> <p>14 purchase the company's stock at a fixed price. So</p> <p>15 if on the day of grant the company is trading at</p> <p>16 \$25, you're granted options to purchase the stock</p> <p>17 at \$25.</p> <p>18 You don't have to exercise. The stock</p> <p>19 increases in value at some point within a 10-year</p> <p>20 period, you can exercise those options and realize</p> <p>21 a gain.</p> <p>22 The numbers shown here reflect their</p> <p>23 disclosed value in their proxy statement, so use</p> <p>24 Black-Scholes or some other method to value the</p> <p>25 prospective value of these options.</p>	<p>Page 227</p> <p>1 ALAN JOHNSON</p> <p>2 Q. In your expert opinion, is it</p> <p>3 appropriate to include the value of the stock</p> <p>4 options when trying to assess the total</p> <p>5 compensation of an executive comparable to</p> <p>6 Mr. Dondero?</p> <p>7 A. Yes, it would be.</p> <p>8 Q. Did you ask Mr. Dondero or anybody</p> <p>9 acting on his behalf whether he ever received any</p> <p>10 stock options of any kind?</p> <p>11 A. I did not.</p> <p>12 Q. So is it fair to say that your</p> <p>13 analysis does not take into account the value of</p> <p>14 any stock options that Mr. Dondero may have</p> <p>15 received?</p> <p>16 A. I was not aware that he received any,</p> <p>17 so it would not have included it, no.</p> <p>18 Q. And nobody told you that he received</p> <p>19 any, correct?</p> <p>20 A. No.</p> <p>21 Q. And you didn't ask, correct?</p> <p>22 A. I don't recall whether I asked or not,</p> <p>23 but I didn't see it anyway.</p> <p>24 Q. The next column relates to restricted</p> <p>25 shares.</p>
<p>Page 228</p> <p>1 ALAN JOHNSON</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What are restricted shares?</p> <p>5 A. It's the grant of shares with time</p> <p>6 vesting. So you receive \$100,000 worth of stock</p> <p>7 in the company, and then that vests over, say, a</p> <p>8 3- or 4-year period. So it's a fixed number of</p> <p>9 shares that vest on the passage of time.</p> <p>10 Q. And in your professional and expert</p> <p>11 opinion, do you believe that the value of</p> <p>12 restricted shares should be considered when</p> <p>13 assessing the total compensation received by</p> <p>14 executives comparable to Mr. Dondero?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ask Mr. Dondero or anybody</p> <p>17 acting on his behalf whether he had ever received</p> <p>18 restricted shares during the 7-year period you</p> <p>19 were analyzing?</p> <p>20 A. I don't recall asking that, no.</p> <p>21 Q. Did Mr. Dondero or anybody on his</p> <p>22 behalf ever disclose to you any restricted shares</p> <p>23 that Mr. Dondero may have received?</p> <p>24 A. I'm not aware that he received any.</p> <p>25 No one told me anything about it.</p>	<p>Page 229</p> <p>1 ALAN JOHNSON</p> <p>2 Q. So is it fair to say that your</p> <p>3 analysis does not take into account any restricted</p> <p>4 shares that Mr. Dondero may have received during</p> <p>5 the 7-year period of your – of your analysis?</p> <p>6 A. Well, he would have if either options</p> <p>7 were the restricted shares. If they had turned</p> <p>8 into actual shares, they would have shown up in</p> <p>9 his W-2.</p> <p>10 So if there were things that didn't</p> <p>11 show up in his W-2, then yes, I would have been</p> <p>12 unaware of it.</p> <p>13 Q. Okay.</p> <p>14 And is the total long term just the</p> <p>15 addition really of the stock options and the</p> <p>16 restricted shares?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 All right. So let's look at a few</p> <p>20 more documents. I'm almost done here.</p> <p>21 MR. MORRIS: Can we go back up to the</p> <p>22 page with Mr. Dondero's chart, 19.</p> <p>23 Yeah, there we go.</p> <p>24 Q. Okay. So you included the NexPoint</p> <p>25 Residential Trust W-2 income, correct?</p>

<p>Page 230</p> <p>1 ALAN JOHNSON</p> <p>2 A. Yes.</p> <p>3 Q. And the only reason that you limited</p> <p>4 yourself to 2018 is because you hadn't found any</p> <p>5 W-2 income related to that entity during your</p> <p>6 diligence, right?</p> <p>7 A. That's right.</p> <p>8 MR. MORRIS: Can we please put up</p> <p>9 what's been marked as Exhibit 67.</p> <p>10 (Exhibit 67, 2019 W-2, was marked for</p> <p>11 identification at this time.)</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Do you see that this is a 2019 W-2</p> <p>14 made out to Mr. Dondero from NexPoint Residential</p> <p>15 Trust, Inc.?</p> <p>16 A. Yes, yes.</p> <p>17 Q. Okay. And if we go to the bottom of</p> <p>18 the page, do you see it says, "Expert No. 1"?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. This is, in fact, a document that was</p> <p>21 provided to you before you completed your report,</p> <p>22 right?</p> <p>23 A. I believe that that appears to be</p> <p>24 right.</p> <p>25 MR. MORRIS: Okay. Let's go back to</p>	<p>Page 231</p> <p>1 ALAN JOHNSON</p> <p>2 the top of the document.</p> <p>3 Q. Do you see that Mr. Dondero had W-2</p> <p>4 income in 2019 of approximately \$1.5 million?</p> <p>5 A. Yes, I believe that's right.</p> <p>6 Q. Okay.</p> <p>7 So for consistency, your report should</p> <p>8 be amended – the chart on paragraph 19 should be</p> <p>9 amended to include the number that's in box 1 of</p> <p>10 the W-2 under W-2 income from NexPoint Residential</p> <p>11 Trust in 2019; correct?</p> <p>12 A. If I've missed it, then it should be</p> <p>13 included, yes.</p> <p>14 MR. MORRIS: Can we go – can we put</p> <p>15 up Exhibit 67-2?</p> <p>16 (Exhibit 67-2, 2017 W-2, was marked</p> <p>17 for identification at this time.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Do you see that this is a 2017 W-2</p> <p>20 issued by NexPoint Residential Trust, Inc. to</p> <p>21 Mr. Dondero?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: Can we go to the bottom</p> <p>24 of the page?</p> <p>25 Can we just see the Bates number?</p>
<p>Page 232</p> <p>1 ALAN JOHNSON</p> <p>2 Oh, hold on, I know what I have to do.</p> <p>3 Yeah, there you go.</p> <p>4 Q. Do you see that it's Bates stamped</p> <p>5 page 937?</p> <p>6 A. Yes, I see that.</p> <p>7 Q. Does that indicate that that document</p> <p>8 was provided to you before you completed your</p> <p>9 report?</p> <p>10 A. I don't know what the Bates number</p> <p>11 means, but I see the 937.</p> <p>12 Q. Well, I'll represent to you, sir, that</p> <p>13 if we went to page 25 of your report, this</p> <p>14 document would be listed among those that you were</p> <p>15 given before you completed your report.</p> <p>16 MR. MORRIS: Can we go back up to the</p> <p>17 top of the document?</p> <p>18 Q. Do you see in Box No. 1, it discloses</p> <p>19 wages of approximately \$625,000?</p> <p>20 A. Yes, I see that.</p> <p>21 Q. And that's the corrected information,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 So looking at this now, in order to be</p>	<p>Page 233</p> <p>1 ALAN JOHNSON</p> <p>2 consistent, that \$625,000 should have been</p> <p>3 included in your report in the chart on page 19,</p> <p>4 correct?</p> <p>5 A. I believe that's right.</p> <p>6 Q. Okay.</p> <p>7 So those two entries alone are</p> <p>8 approximately \$2.5 million, or more than</p> <p>9 10 percent of the \$21 million difference that you</p> <p>10 calculated, correct?</p> <p>11 A. Yes, I believe that's right.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Can we please put up</p> <p>14 Exhibit No. 68?</p> <p>15 (Exhibit 68, compensation and benefit</p> <p>16 statement for 2016, was marked for</p> <p>17 identification at this time.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. So what's on the screen, sir,</p> <p>20 is a compensation and benefit statement that I</p> <p>21 will represent to you was prepared by Highland in</p> <p>22 the ordinary course of its business for years for</p> <p>23 every employee – I think for every employee in</p> <p>24 the organization.</p> <p>25 And if we go down to the bottom, you</p>

<p>1 ALAN JOHNSON</p> <p>2 can see that this document was produced to</p> <p>3 Mr. Dondero's lawyers previously.</p> <p>4 And if we can scroll back up, do you</p> <p>5 see that there's reference in the middle to a 2016</p> <p>6 deferred compensation award?</p> <p>7 MR. AIGEN: Hey, John, I think you</p> <p>8 tried to scroll down to show the Bates</p> <p>9 label, but I don't think it went far enough.</p> <p>10 I just want to write down what the</p> <p>11 Bates label was so I can have it for my</p> <p>12 records.</p> <p>13 MR. MORRIS: Sure.</p> <p>14 MR. AIGEN: Or if you can read it into</p> <p>15 the record, that will work, too.</p> <p>16 MR. MORRIS: Sure.</p> <p>17 It's D-CNL003585.</p> <p>18 MR. AIGEN: Thank you.</p> <p>19 Q. And do you see that he's got total</p> <p>20 compensation listed there of \$2.3 million?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. Okay.</p> <p>23 Do you see that there's a reference to</p> <p>24 a deferred compensation award?</p> <p>25 A. Yes.</p>	<p>Page 234</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And that award of \$1.2 million relates</p> <p>3 to 50,000 restricted stock units of NXRT.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And you testified earlier that</p> <p>7 restricted stock is something that should be taken</p> <p>8 into account when assessing the total compensation</p> <p>9 of an executive, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And NXRT, do you know what that symbol</p> <p>12 represents?</p> <p>13 A. I don't think I've seen that symbol.</p> <p>14 Q. Okay. If I represented to you that it</p> <p>15 is the symbol for the NexPoint Residential Trust</p> <p>16 that we were just looking at – the W-2s that we</p> <p>17 were just looking at, do you think that this</p> <p>18 \$1.2 million should be taken into account in</p> <p>19 Mr. Dondero's 2016 total compensation since it is</p> <p>20 restricted stock units that were given to him in</p> <p>21 that year?</p> <p>22 A. I'd certainly have to consider that,</p> <p>23 yes.</p> <p>24 Q. Okay.</p> <p>25 But you weren't given this</p>
<p>1 ALAN JOHNSON</p> <p>2 information, correct?</p> <p>3 A. I don't think I've seen this.</p> <p>4 Q. Okay.</p> <p>5 MR. MORRIS: Can we please go to</p> <p>6 Exhibit 50, 5-0.</p> <p>7 (Exhibit 50, compensation and benefit</p> <p>8 statement for 2017, was marked for</p> <p>9 identification at this time.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. I'll represent to you that this is</p> <p>12 Mr. Dondero's compensation and benefit statement</p> <p>13 for 2017.</p> <p>14 Do you see there's another reference</p> <p>15 to approximately \$1.55 million in restricted stock</p> <p>16 units that were granted to him for the 2017</p> <p>17 performance year?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. And nobody told you that Mr. Dondero</p> <p>20 had received any stock options prior to today,</p> <p>21 correct – withdrawn.</p> <p>22 Nobody told you that Mr. Dondero had</p> <p>23 received restricted stock units of NXRT before</p> <p>24 today, correct?</p> <p>25 A. I was not aware of this when I wrote</p>	<p>Page 235</p> <p>1 ALAN JOHNSON</p> <p>2 my report, no.</p> <p>3 Q. You would have – this number –</p> <p>4 withdrawn.</p> <p>5 MR. MORRIS: Can we go to the bottom</p> <p>6 of the page, please?</p> <p>7 Just for the record, this is document</p> <p>8 with Bates No. D-CNL003587.</p> <p>9 And if you can scroll back up.</p> <p>10 Q. If Mr. Dondero received restricted</p> <p>11 stock units of NexPoint Residential Trust in 2017</p> <p>12 for the performance – for his performance during</p> <p>13 that year in an amount of \$1.55 million that's –</p> <p>14 that's compensation that you would have included</p> <p>15 in your report had you known about it at the time,</p> <p>16 correct?</p> <p>17 A. Probably would have, yes.</p> <p>18 MR. MORRIS: Okay. Can we go to</p> <p>19 Exhibit 51, please.</p> <p>20 (Exhibit 51, compensation and benefit</p> <p>21 statement for 2018, was marked for</p> <p>22 identification at this time.)</p> <p>23 MR. MORRIS: Okay. This is</p> <p>24 Mr. Dondero's compensation and benefits</p> <p>25 statement for 2018.</p>



<p>Page 238</p> <p>1 ALAN JOHNSON</p> <p>2 If we can go to the bottom.</p> <p>3 And it has Bates No. D-CNL003588.</p> <p>4 And if we can scroll back up, please.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. According to this compensation and</p> <p>7 benefits statement, Mr. Dondero received almost</p> <p>8 \$1.7 million in restricted stock units of NXRT for</p> <p>9 the 2018 performance year.</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Were you told that Mr. Dondero</p> <p>13 received restricted stock units of NXRT for the</p> <p>14 2018 performance year?</p> <p>15 A. I was not aware of that.</p> <p>16 Q. Had you known that prior to issuing</p> <p>17 your report, would you have included that in your</p> <p>18 assessment of Mr. Dondero's total compensation for</p> <p>19 the year 2018?</p> <p>20 A. I would have looked at those awards,</p> <p>21 yes.</p> <p>22 MR. MORRIS: Let's go to Exhibit 52,</p> <p>23 please.</p> <p>24 (Exhibit 52, compensation and benefits</p> <p>25 statement for 2019, was marked for</p>	<p>Page 239</p> <p>1 ALAN JOHNSON</p> <p>2 identification at this time.)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. And when you say you would have looked</p> <p>5 at the awards, if you assume that they are</p> <p>6 restricted stock units of NexPoint Residential</p> <p>7 Trust, is there any basis on which you would not</p> <p>8 have included those restricted – the value those</p> <p>9 restricted stock units in an analysis of</p> <p>10 Mr. Dondero's total compensation, just as you did</p> <p>11 for the other executives that are your comps?</p> <p>12 A. I want to know what the terms of the</p> <p>13 awards were. I don't know how NXRT was valued, so</p> <p>14 I would want to – more information about – this</p> <p>15 is as employee statement, so I don't know how</p> <p>16 accurate it would be, but I would certainly – if</p> <p>17 I'd have been aware of this, would certainly want</p> <p>18 to consider what those awards were worth, you</p> <p>19 know, what a comparable like-to-like comparison</p> <p>20 would be.</p> <p>21 Q. Okay.</p> <p>22 The next document that we have on the</p> <p>23 screen is Exhibit 52, which is Mr. Dondero's</p> <p>24 compensation and benefits statement for 2019.</p> <p>25 And if we go to the bottom, we will</p>
<p>Page 240</p> <p>1 ALAN JOHNSON</p> <p>2 see it has Bates No. D-CNL003589.</p> <p>3 Do you see that, sir?</p> <p>4 A. Yes.</p> <p>5 Q. And if we scroll back up, you'll see</p> <p>6 that Mr. Dondero received in 2019 a deferred</p> <p>7 compensation award of approximately \$5.6 million</p> <p>8 in the form of various grants of what appear to be</p> <p>9 stock?</p> <p>10 A. Yes, the number on the page is 5</p> <p>11 million 6, yes.</p> <p>12 Q. And you weren't told that Mr. Dondero</p> <p>13 had received any grants of stock as part of a</p> <p>14 deferred compensation award in 2019, correct?</p> <p>15 A. I was not aware of that, no.</p> <p>16 Q. But had you – had you known about the</p> <p>17 deferred compensation award, you certainly would</p> <p>18 have asked the questions, right?</p> <p>19 A. I would have asked questions, yes.</p> <p>20 Q. And is it fair to say as you sit here</p> <p>21 right now that just as you included the restricted</p> <p>22 stock and the stock options in your comps, you</p> <p>23 would have included this \$5.6 million in your</p> <p>24 analysis of Mr. Dondero's 2019 compensation?</p> <p>25 MR. AIGEN: Objection, form.</p>	<p>Page 241</p> <p>1 ALAN JOHNSON</p> <p>2 A. I – I don't know what amount of the 5</p> <p>3 million 6. I think, as I said before, I'd want to</p> <p>4 know more about these entities and what – what –</p> <p>5 you know, how they were valued and so forth, but</p> <p>6 I'd certainly want to be aware of it in coming up</p> <p>7 with an aggregated figure for its compensation.</p> <p>8 Q. As you sit here right now, based on</p> <p>9 the documents we've looked at so far, your</p> <p>10 \$21 million is subject to some questions. Is that</p> <p>11 fair?</p> <p>12 A. It's fair. Certainly, the cash</p> <p>13 amounts that he was paid should be added back, and</p> <p>14 then we have these series of deferred comp awards</p> <p>15 that I'd have to consider how do we include some</p> <p>16 or all of it value.</p> <p>17 Q. But you weren't told about any of</p> <p>18 these awards before you prepared your report,</p> <p>19 correct?</p> <p>20 A. I was not aware of them.</p> <p>21 Q. And you don't have any information as</p> <p>22 you sit here today that you're aware of that</p> <p>23 relates to any of these awards except what I'm</p> <p>24 showing you, right?</p> <p>25 A. I'm not aware of the terms of these</p>

<p>Page 242</p> <p>1 ALAN JOHNSON</p> <p>2 awards, no.</p> <p>3 MR. MORRIS: Okay. Let's go to</p> <p>4 Exhibit 67-3, which is Mr. Dondero's 2013</p> <p>5 Form 1040.</p> <p>6 (Exhibit 67-3, 2013 Form 1040, was</p> <p>7 marked for identification at this time.)</p> <p>8 MR. MORRIS: And if we can go to PDF</p> <p>9 page 279 of 335.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Do you see you received Mr. Dondero's</p> <p>12 Forms 1040 for the period 2013 through I think</p> <p>13 either 2019 or 2020, right?</p> <p>14 A. Yes, I believe so.</p> <p>15 Q. Did you take the time to look at the</p> <p>16 statements supporting his 1040s that relate to</p> <p>17 wages received?</p> <p>18 A. I went through it, yes.</p> <p>19 Q. Do you see on statement 12 there's a</p> <p>20 reference to Highland Capital Management PTE LTD?</p> <p>21 A. I'm sorry, where are we on the page?</p> <p>22 Q. We're looking at the top. It's</p> <p>23 statement 12.</p> <p>24 A. Okay.</p> <p>25 Q. Okay.</p>	<p>Page 243</p> <p>1 ALAN JOHNSON</p> <p>2 And do you see there's a reference to</p> <p>3 Highland Capital Management PTE LTD?</p> <p>4 A. I see that, yes.</p> <p>5 Q. Do you have any idea what that entity</p> <p>6 is?</p> <p>7 A. I don't – I don't know.</p> <p>8 Q. Have you ever heard of it before?</p> <p>9 A. I don't believe so.</p> <p>10 Q. In your review of Mr. Dondero's tax</p> <p>11 returns, did you ever notice that he had received</p> <p>12 W-2 income from that firm?</p> <p>13 A. If I looked at it, I don't recall.</p> <p>14 Q. Based on the name of the entity by</p> <p>15 itself, is it fair to conclude in the absence of</p> <p>16 contrary information that any W-2 income he</p> <p>17 received from an entity called Highland Capital</p> <p>18 Management PTE LTD should have been included in</p> <p>19 your report?</p> <p>20 MR. AIGEN: Objection, form.</p> <p>21 A. That – that, I don't know. That, I</p> <p>22 don't know.</p> <p>23 Q. All right. Mr. Johnson, I'm going to,</p> <p>24 you know, save us all the pain and tell you that</p> <p>25 if we looked at Mr. Dondero's Forms 1040 for the</p>
<p>Page 244</p> <p>1 ALAN JOHNSON</p> <p>2 period from 2013 to 2019, Mr. Dondero reported</p> <p>3 receiving W-2 income from Highland Capital</p> <p>4 Management PTE LTD in every single year.</p> <p>5 And I will also represent to you that</p> <p>6 the aggregate amount of those payments were</p> <p>7 approximately a half a million dollars, and that</p> <p>8 if we added up the value of the payment – the W-2</p> <p>9 payments from Highland Capital Management PTE LTD,</p> <p>10 along with the NexPoint Residential Trust W-2</p> <p>11 income that we looked at, along with the value of</p> <p>12 the stock options, that we would come up with a</p> <p>13 number in excess of \$13 million, with that</p> <p>14 representation, how comfortable are you that your</p> <p>15 \$21 million accurately states the difference</p> <p>16 between what Mr. Dondero received in the 7-year</p> <p>17 period from 2013 through 2019 and what he would</p> <p>18 have received if he had received the comparable</p> <p>19 market compensation for similarly situated</p> <p>20 executives?</p> <p>21 MR. AIGEN: Objection, form.</p> <p>22 A. I think you pointed out some</p> <p>23 adjustments that would need to be made. I think,</p> <p>24 as I testified before, I would need to go back and</p> <p>25 look at the value of those awards.</p>	<p>Page 245</p> <p>1 ALAN JOHNSON</p> <p>2 I think of the \$8 million you referred</p> <p>3 to, I think about 5 or 6 million was made in the</p> <p>4 year of bankruptcy, which I would certainly put</p> <p>5 probably, in the work we do, put a question mark</p> <p>6 next to, but you certainly pointed out some</p> <p>7 omissions that should be included.</p> <p>8 So the \$21 million analysis would</p> <p>9 certainly look like it would get somewhat smaller,</p> <p>10 but I would – sitting here, the 8 million you</p> <p>11 mentioned, that looks like about 4 or 5 million</p> <p>12 was a deferred comp award made in the year of</p> <p>13 bankruptcy, which I'd probably put a question mark</p> <p>14 around.</p> <p>15 But it does look like, to some degree,</p> <p>16 the \$21 million difference that I've calculated</p> <p>17 would be reduced.</p> <p>18 Q. Have you done any analysis to</p> <p>19 determine whether or not Mr. Dondero passed</p> <p>20 through any personal expenses through the</p> <p>21 business?</p> <p>22 A. That, I don't know.</p> <p>23 Q. Is that something that you would</p> <p>24 consider if you had the information available, you</p> <p>25 know, whether or not he passed personal expenses</p>

<p>Page 246</p> <p>1 ALAN JOHNSON</p> <p>2 on through the business?</p> <p>3 A. Well, it should be – it should be</p> <p>4 disclosed in his W-2, if he's – if he's filling</p> <p>5 out a W-2 or other income, but if it wasn't</p> <p>6 reported on his taxes or there's a W-2, I wouldn't</p> <p>7 know about it.</p> <p>8 Q. I appreciate that you wouldn't know</p> <p>9 about it.</p> <p>10 I'm just asking you if you were trying</p> <p>11 to assess the value that Mr. Dondero received from</p> <p>12 serving as Highland's CEO, would you take into</p> <p>13 account, if you had the information available and</p> <p>14 you could quantify it, the value of any personal</p> <p>15 expenses that – that he ran through the business?</p> <p>16 A. I would be reluctant to do that just</p> <p>17 because many private business owners do a similar</p> <p>18 thing, so it would not be fair to Mr. Dondero or</p> <p>19 any other executive in his position to only do one</p> <p>20 side of that trade.</p> <p>21 So if I said \$6 million was the</p> <p>22 appropriate level that many private business</p> <p>23 owners do similar things, so if there's something</p> <p>24 particularly unusual, I might want to be aware of</p> <p>25 it, but if it was the normal course of what</p>	<p>Page 247</p> <p>1 ALAN JOHNSON</p> <p>2 business owners often do, I probably wouldn't</p> <p>3 include it.</p> <p>4 Q. Your comparable individuals in 2019,</p> <p>5 are those CEOs of public companies?</p> <p>6 A. The real comparison here, the</p> <p>7 \$6 million figure, is primarily not CEOs of public</p> <p>8 companies. The small asset management companies</p> <p>9 that we list are not – neither paid that high in</p> <p>10 the roles, as we say in the report, are</p> <p>11 meaningfully different.</p> <p>12 I think the real reference point is</p> <p>13 people who manage similar assets mostly in the</p> <p>14 private domain. So I think many of those CEOs,</p> <p>15 founders, owners, would – the issue we're talking</p> <p>16 about, would pass on allegedly personal expenses</p> <p>17 through the business.</p> <p>18 Q. How about – we talked about this a</p> <p>19 little bit earlier.</p> <p>20 You're aware that Highland doesn't</p> <p>21 have an ownership interest in HCRE or Highland</p> <p>22 Capital Management Fund Advisors or NexPoint or</p> <p>23 Highland Capital Management Service, right?</p> <p>24 A. I'm sorry, are you saying Highland</p> <p>25 doesn't have an ownership interest?</p>
<p>Page 248</p> <p>1 ALAN JOHNSON</p> <p>2 Is that what you're saying? I just</p> <p>3 want to make sure I heard correctly.</p> <p>4 Q. Yes.</p> <p>5 A. I believe that's true yes.</p> <p>6 Q. And you're also aware that Mr. Dondero</p> <p>7 directly or indirectly owns at least the majority</p> <p>8 interest in each of these four entities, right?</p> <p>9 A. I'm aware of the NexPoint and</p> <p>10 Advisors. The real estate, I'm not sure I've ever</p> <p>11 heard about the ownership, but certainly, at least</p> <p>12 several of those, he's the controlling or sole</p> <p>13 owner.</p> <p>14 Q. Are you aware that – that Highland</p> <p>15 Capital Management – withdrawn.</p> <p>16 Are you aware that Highland provided</p> <p>17 services to Highland Capital Fund Advisor as</p> <p>18 NexPoint pursuant to certain shared services</p> <p>19 agreements?</p> <p>20 A. I was aware of that.</p> <p>21 Q. And are you aware that until sometime</p> <p>22 in late 2020, HCMFA and NexPoint made payments to</p> <p>23 Highland in exchange for those services?</p> <p>24 A. I think I was aware of that, yes.</p> <p>25 Q. Are you aware that when Mr. Dondero</p>	<p>Page 249</p> <p>1 ALAN JOHNSON</p> <p>2 was in control, Highland also provided services to</p> <p>3 Highland Capital Management Services, Inc. as well</p> <p>4 as HCRE Partners, LLC?</p> <p>5 A. I think I was aware of that as well.</p> <p>6 Q. And were you aware that neither of</p> <p>7 those entities had any shared services agreement</p> <p>8 with Highland?</p> <p>9 A. That, I'm not sure I was aware of.</p> <p>10 Q. Are you aware that neither of those</p> <p>11 entities ever provided any cash payment to</p> <p>12 Highland for services rendered?</p> <p>13 A. I have no knowledge of that.</p> <p>14 Q. Is it fair to say that your analysis</p> <p>15 doesn't take into account the value that HCRE and</p> <p>16 HCMS received by getting services from Highland</p> <p>17 without paying for them?</p> <p>18 MR. AIGEN: Objection, form.</p> <p>19 A. I am not familiar with what services</p> <p>20 they received, so I don't – I don't know how to</p> <p>21 handle that.</p> <p>22 Q. Let's assume that HCMS and HCRE</p> <p>23 received back-office services similar to what</p> <p>24 HCMFA and NexPoint contracted and paid for. Okay?</p> <p>25 Can we – can we make that assumption?</p>

<p>Page 250</p> <p>1 ALAN JOHNSON</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 And let's assume that neither of those</p> <p>5 entities, HCRE or HCMS, ever paid any money to</p> <p>6 Highland in exchange for those services. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. As the person in control of those</p> <p>9 entities, do you think it would be appropriate to</p> <p>10 try to quantify the benefit that Mr. Dondero</p> <p>11 received through his ownership of HCRE and HCMS as</p> <p>12 a result of Highland's providing services to those</p> <p>13 entities without compensation?</p> <p>14 MR. AIGEN: Objection, form.</p> <p>15 A. At a high level, I think if Highland</p> <p>16 was providing meaningful services that had value</p> <p>17 to those entities and Highland wasn't getting</p> <p>18 something back in return, you would want to try to</p> <p>19 understand how big that was.</p> <p>20 Q. Okay.</p> <p>21 But that's not an issue that you</p> <p>22 analyzed, correct?</p> <p>23 A. It is not.</p> <p>24 Q. And your \$21 million delta doesn't</p> <p>25 take into account that issue at all, correct?</p>	<p>Page 251</p> <p>1 ALAN JOHNSON</p> <p>2 A. It does not take that into account,</p> <p>3 no.</p> <p>4 Q. And you didn't do any diligence to try</p> <p>5 to determine whether or not Highland had provided</p> <p>6 services without receiving payment in return with</p> <p>7 respect to HCMS and HCRE, correct?</p> <p>8 A. I did no such analysis.</p> <p>9 Q. Okay.</p> <p>10 MR. MORRIS: Can we take -- it's 2:45.</p> <p>11 Let's take a 5-minute break, a short break.</p> <p>12 I may be done.</p> <p>13 (Recess taken from 2:45 p.m. until</p> <p>14 2:50 p.m.)</p> <p>15 MR. MORRIS: I have no further</p> <p>16 questions of this witness at this time.</p> <p>17 Thank you very much, Mr. Johnson, for</p> <p>18 your time and your patience.</p> <p>19 THE WITNESS: Thank you, and also say</p> <p>20 hi to Laura Johnson for me.</p> <p>21 MR. MORRIS: I sure will. I'm sure</p> <p>22 I'll be speaking to her this afternoon.</p> <p>23 MR. AIGEN: Alan, you're not</p> <p>24 completely done yet. I have one or two</p> <p>25 questions I wanted to ask you, just to clear</p>
<p>Page 252</p> <p>1 ALAN JOHNSON</p> <p>2 something up.</p> <p>3 THE WITNESS: Okay.</p> <p>4 EXAMINATION</p> <p>5 BY MR. AIGEN:</p> <p>6 Q. You talked about the founder's premium</p> <p>7 earlier.</p> <p>8 Can you just again explain what that</p> <p>9 means?</p> <p>10 A. Founder's premium in a private firm</p> <p>11 like this is the amount that a founder typically</p> <p>12 gets paid in excess of what a non-founder or</p> <p>13 ordinary executive gets paid.</p> <p>14 Q. And I know you don't have a specific</p> <p>15 number but do you have an opinion on what the</p> <p>16 general founder's premium would be in this</p> <p>17 marketplace?</p> <p>18 MR. MORRIS: Objection to the form of</p> <p>19 the question.</p> <p>20 A. A premium could be very significant.</p> <p>21 It could be two or even three times what the --</p> <p>22 what a typical executive might get paid.</p> <p>23 Q. And what's that based on?</p> <p>24 A. Just working with these</p> <p>25 founder-dominated firms, they often get paid an</p>	<p>Page 253</p> <p>1 ALAN JOHNSON</p> <p>2 awful lot for -- for the role they play.</p> <p>3 MR. AIGEN: That's all I have.</p> <p>4 MR. MORRIS: Just a couple of</p> <p>5 questions, Mr. Johnson.</p> <p>6 EXAMINATION (CONTINUED)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You didn't make any disclosure</p> <p>9 concerning a founder's premium, correct?</p> <p>10 A. No, I have not done that work.</p> <p>11 Q. You did not conduct any analysis</p> <p>12 concerning a founder's premium, correct?</p> <p>13 A. I have not.</p> <p>14 MR. AIGEN: Object to form.</p> <p>15 Q. And your report contains no opinion as</p> <p>16 to what you believe the founder's premium should</p> <p>17 be in this case, correct?</p> <p>18 A. That is correct.</p> <p>19 MR. MORRIS: Okay. No further</p> <p>20 questions. Thank you very much.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 MR. MORRIS: Have a good day. Take</p> <p>23 care all.</p> <p>24 (Whereupon the proceedings were</p> <p>25 concluded at 2:53 p.m.)</p>

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1  
2 oOo  
3 I, ALAN JOHNSON, the witness herein,  
4 do hereby certify that the foregoing  
5 testimony of the pages of this deposition to  
6 be a true and correct transcript, subject to  
7 the corrections, if any, shown on the  
8 attached page.

9 \_\_\_\_\_  
10 ALAN JOHNSON

11 Subscribed and sworn to before me this

12 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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1  
2 CERTIFICATE  
3 I, AMY A. RIVERA, a Certified Shorthand  
4 Reporter, Registered Professional Reporter,  
5 Certified LiveNote Reporter, and Notary Public of  
6 the State of New York, do hereby certify that prior  
7 to the commencement of the examination ALAN JOHNSON,  
8 was duly sworn by me to testify the truth, the whole  
9 truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the foregoing is  
11 a true and accurate transcript of the testimony as  
12 taken stenographically by and before me at the time,  
13 place and on the date hereinbefore set forth.  
14 I DO FURTHER CERTIFY that I am neither a  
15 relative nor employee nor attorney nor counsel of  
16 any of the parties to this action, and that I am  
17 neither a relative nor employee of such attorney or  
18 counsel, and that I am not financially interested in  
19 the action.

20 \_\_\_\_\_  
21 Notary Public of the State of New York

22 My commission expires December 6, 2021

23 License No. XI00939

24 Dated: November 2, 2021  
25

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4 L.P.  
5 Dep. Date: November 2, 2021  
6 Deponent: Alan Johnson  
7 Reason codes:  
8 1. To clarify the record.  
9 2. To conform to the facts.  
10 3. To correct transcription errors.  
11 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
12 From \_\_\_\_ to \_\_\_\_  
13 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
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20 From \_\_\_\_ to \_\_\_\_  
21  
22 ALAN JOHNSON  
23 Subscribed and sworn to before me  
24 this day of 2021.  
25

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**EXHIBIT 102**

**INTENTIONALLY  
OMITTED**

**EXHIBIT 103**

**INTENTIONALLY  
OMITTED**

**EXHIBIT 104**

**INTENTIONALLY  
OMITTED**



## **EXHIBIT 105**

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11  
8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P., CASE NO.  
10 19-34054-SGI11

11 Debtor.  
12 -----

13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs. Adversary  
16 Proceeding No.  
17 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI  
18 FUND ADVISORS, L.P.; NEXPOINT  
19 ADVISORS, L.P.; HIGHLAND  
20 INCOME FUND; NEXPOINT  
21 STRATEGIC OPPORTUNITIES FUND;  
22 NEXPOINT CAPITAL, INC.; and  
23 CLO HOLDCO, LTD.,

24 Defendants.  
25 -----

26

27 REMOTE VIDEOTAPED DEPOSITION OF

28 FRANK WATERHOUSE

29 October 19, 2021

30

31

32

33

34 Reported by: Susan S. Klinger, RMR-CRR, CSR

35 Job No: 201195

<p>1 WATERHOUSE - 10-19-21</p> <p>2</p> <p>3</p> <p>4 October 19, 2021</p> <p>5 9:30 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of FRANK WATERHOUSE,</p> <p>10 held before Susan S. Klinger, a Registered</p> <p>11 Merit Reporter and Certified Realtime Reporter</p> <p>12 of the State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 APPEARANCES:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>9 780 Third Avenue</p> <p>10 New York, New York 10017</p> <p>11 Attorneys for the Witness:</p> <p>12 Debra Dandeneau, Esq.</p> <p>13 Michelle Hartmann, Esq.</p> <p>14 BAKER MCKENZIE</p> <p>15 1900 North Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 Attorneys for NexPoint Advisors, LP and</p> <p>18 Highland Capital Management Fund Advisors,</p> <p>19 L.P.:</p> <p>20 Davor Rukavina, Esq.</p> <p>21 An Nguyen, Esq.</p> <p>22 MUNSCH HARDT KOPF &amp; HARDD</p> <p>23 500 North Akard Street</p> <p>24 Dallas, Texas 75201-6659</p> <p>25</p>																																												
<p>1 WATERHOUSE - 10-19-21</p> <p>2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,</p> <p>3 and HCMS:</p> <p>4 Deborah Deitsch-Perez, Esq.</p> <p>5 Michael Aigen, Esq.</p> <p>6 STINSON</p> <p>7 3102 Oak Lawn Avenue</p> <p>8 Dallas, Texas 75219</p> <p>9</p> <p>10 Attorneys for Dugaboy Investment Trust:</p> <p>11 Warren Horn, Esq.</p> <p>12 HELLER, DRAPER &amp; HORN</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15</p> <p>16 Attorneys for Marc Kirschner as the trustee for</p> <p>17 the litigation SunTrust:</p> <p>18 Deborah Newman, Esq.</p> <p>19 QUINN EMANUEL URQUHART &amp; SULLIVAN</p> <p>20 51 Madison Avenue</p> <p>21 New York, New York 10010</p> <p>22</p> <p>23 Also Present:</p> <p>24 Ms. La Asia Canty</p> <p>25</p>	<p>Page 4</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 INDEX</p> <p>3</p> <table border="0"> <tr> <td>4 WITNESS</td> <td>PAGE</td> </tr> <tr> <td>5 FRANK WATERHOUSE</td> <td></td> </tr> <tr> <td>6 EXAMINATION BY MR. MORRIS</td> <td>10</td> </tr> <tr> <td>7 EXAMINATION BY MR. RUKAVINA</td> <td>256</td> </tr> <tr> <td>8 EXAMINATION BY MS. DEITSCH-PEREZ</td> <td>352</td> </tr> <tr> <td>9 EXAMINATION BY MR. MORRIS</td> <td>377</td> </tr> <tr> <td>10 EXAMINATION BY MR. RUKAVINA</td> <td>387</td> </tr> <tr> <td>11 EXAMINATION BY MS. DEITSCH-PEREZ</td> <td>393</td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13 EXHIBITS</td> <td></td> </tr> <tr> <td>14 No.</td> <td>Page</td> </tr> <tr> <td>15 Exhibit 2 NPA et al Amended Complaint</td> <td>142</td> </tr> <tr> <td>16 Exhibit 33 6/3/19 Management</td> <td>91</td> </tr> <tr> <td>17 Representation</td> <td></td> </tr> <tr> <td>18 Exhibit 34 HCMLP Consolidated Financial</td> <td>94</td> </tr> <tr> <td>19 Statements</td> <td></td> </tr> <tr> <td>20 Exhibit 35 HCMFA Incumbency Certificate</td> <td>151</td> </tr> <tr> <td>21 Exhibit 36 Email string re 15(c)</td> <td>170</td> </tr> <tr> <td>22 Exhibit 39 HCMLP Operating Results 2/18</td> <td>226</td> </tr> <tr> <td>23 Exhibit 40 Summary of Assets and</td> <td>236</td> </tr> <tr> <td>24 Liabilities</td> <td></td> </tr> <tr> <td>25 Exhibit 41 12/19 Monthly Operating Report</td> <td>258</td> </tr> </table> <p>Page 5</p>	4 WITNESS	PAGE	5 FRANK WATERHOUSE		6 EXAMINATION BY MR. MORRIS	10	7 EXAMINATION BY MR. RUKAVINA	256	8 EXAMINATION BY MS. DEITSCH-PEREZ	352	9 EXAMINATION BY MR. MORRIS	377	10 EXAMINATION BY MR. RUKAVINA	387	11 EXAMINATION BY MS. DEITSCH-PEREZ	393	12		13 EXHIBITS		14 No.	Page	15 Exhibit 2 NPA et al Amended Complaint	142	16 Exhibit 33 6/3/19 Management	91	17 Representation		18 Exhibit 34 HCMLP Consolidated Financial	94	19 Statements		20 Exhibit 35 HCMFA Incumbency Certificate	151	21 Exhibit 36 Email string re 15(c)	170	22 Exhibit 39 HCMLP Operating Results 2/18	226	23 Exhibit 40 Summary of Assets and	236	24 Liabilities		25 Exhibit 41 12/19 Monthly Operating Report	258
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<p>Page 8</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 here, as we did yesterday. If anybody has</p> <p>3 a problem with what was just stated, can</p> <p>4 you state your objection now?</p> <p>5 Okay. No response, so everybody</p> <p>6 accepts the stipulation and the instruction</p> <p>7 that was just given.</p> <p>8 VIDEOGRAPHER: Thank you. This is</p> <p>9 the start of media labeled Number 1 of the</p> <p>10 video recorded deposition of Frank</p> <p>11 Waterhouse In Re: Highland Capital</p> <p>12 Management, L.P., in the United States</p> <p>13 Bankruptcy Court for the Northern District</p> <p>14 of Texas, Dallas Division, Case Number</p> <p>15 21-03000-SGI.</p> <p>16 This deposition is being held via</p> <p>17 video conference with participants</p> <p>18 appearing remotely due to COVID-19</p> <p>19 restrictions on Tuesday, October 19th, 2021</p> <p>20 at approximately 9:32 a.m. My name is</p> <p>21 Scott Hatch, legal video specialist with</p> <p>22 TSG Reporting, Inc. headquartered at 228</p> <p>23 East 45th Street, New York, New York. The</p> <p>24 court reporter is Susan Klinger in</p> <p>25 association with TSG Reporting.</p>	<p>Page 9</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Counsel, please introduce</p> <p>3 yourselves.</p> <p>4 MR. MORRIS: John Morris, Pachulski</p> <p>5 Stang Ziehl &amp; Jones for the reorganized</p> <p>6 Highland Capital Management, L.P., the</p> <p>7 plaintiff in these actions.</p> <p>8 MS. DANDENEAU: Deborah Dandeneau</p> <p>9 from Baker McKenzie. My partner, Michelle</p> <p>10 Hartmann, is also in the room with me,</p> <p>11 representing Frank Waterhouse individually.</p> <p>12 MS. DEITSCH-PEREZ: Deborah</p> <p>13 Deitsch-Perez from Stinson, LLP,</p> <p>14 representing Jim Dondero, Nancy Dondero,</p> <p>15 HCRA, and HCMS.</p> <p>16 MR. HORN: Warren Horn with Heller,</p> <p>17 Draper &amp; Horn in New Orleans representing</p> <p>18 Dugaboy Investment Trust.</p> <p>19 MR. RUKAVINA: Davor Rukavina with</p> <p>20 Munsch Hardt Kopf &amp; Harr in Dallas</p> <p>21 representing NexPoint Advisors, LP and</p> <p>22 Highland Capital Management Fund Advisors,</p> <p>23 L.P.</p> <p>24 MR. AIGEN: Michael Aigen from</p> <p>25 Stinson, and I represent the same parties</p>

<p>Page 10</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as Deborah Deitsch-Perez.</p> <p>3 MS. NEWMAN: This is Deborah Newman</p> <p>4 from Quinn Emanuel. We represent the</p> <p>5 litigation – Marc Kirschner as the trustee</p> <p>6 for the litigation SunTrust.</p> <p>7 MR. MORRIS: I think that is</p> <p>8 everybody.</p> <p>9 VIDEOGRAPHER: Thank you. Will the</p> <p>10 court reporter please swear in the witness.</p> <p>11 FRANK WATERHOUSE,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Please state your name for the</p> <p>17 record.</p> <p>18 A. My name is Frank Waterhouse.</p> <p>19 Q. Good morning, Mr. Waterhouse. I'm</p> <p>20 John Morris, as you know, from Pachulski Stang</p> <p>21 Ziehl &amp; Jones. You understand that my firm and</p> <p>22 I represent Highland Capital Management, L.P.;</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you understand that</p>	<p>Page 11</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we're here today for your deposition in your</p> <p>3 individual capacity?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review and – did you</p> <p>6 receive and review a subpoena that Highland</p> <p>7 Capital Management, L.P., served upon you?</p> <p>8 A. Yes.</p> <p>9 Q. You have been deposed before; right?</p> <p>10 A. Yes.</p> <p>11 Q. How many times have you been</p> <p>12 deposed?</p> <p>13 A. About three or four times.</p> <p>14 Q. Okay. And I defended you in one</p> <p>15 deposition; isn't that right?</p> <p>16 A. That is correct.</p> <p>17 Q. So the general ground rules for this</p> <p>18 deposition are largely the same as the</p> <p>19 depositions you have given before. And that is</p> <p>20 I will ask you a series of questions, and it is</p> <p>21 important that you allow me to finish my</p> <p>22 question before you begin your answer; is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. And it is important that I allow you</p>
<p>Page 12</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to finish your answers before I begin a</p> <p>3 question, but if I fail to do that, will you</p> <p>4 let me know?</p> <p>5 A. I can certainly do that.</p> <p>6 Q. Okay. Do you understand that this</p> <p>7 deposition is being videotaped?</p> <p>8 A. Yes.</p> <p>9 Q. You understand that I may seek to</p> <p>10 use portions of the videotape in a court of</p> <p>11 law?</p> <p>12 A. I did not know that, until you just</p> <p>13 said that.</p> <p>14 Q. Okay. And you are aware of that now</p> <p>15 before the deposition begins substantively; is</p> <p>16 that right?</p> <p>17 A. Yes.</p> <p>18 Q. So unlike I think the other</p> <p>19 depositions that you have given, this one is</p> <p>20 being given remotely. So that presents some</p> <p>21 unique challenges, at least as compared to a</p> <p>22 deposition that is taken in-person.</p> <p>23 From time to time we're going to put</p> <p>24 documents up on the screen, Mr. Waterhouse.</p> <p>25 And it is important that I give you the</p>	<p>Page 13</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 opportunity to review any portion of the</p> <p>3 document that you think you need in order to</p> <p>4 fully and completely answer the question.</p> <p>5 So I would ask you to let me know if</p> <p>6 there is a portion of a document that you need</p> <p>7 to see in order to fully and completely answer</p> <p>8 the question. Can you do that for me?</p> <p>9 A. Yes.</p> <p>10 MS. DANDENEAU: Mr. Morris, I would</p> <p>11 just note that we do have hard copies of</p> <p>12 the documents that you sent, so if you can</p> <p>13 just refer to the exhibit number as</p> <p>14 reflected in the documents that you sent,</p> <p>15 Mr. Waterhouse will be able to look at the</p> <p>16 hard copies of those documents.</p> <p>17 MR. MORRIS: I appreciate that,</p> <p>18 and – and I will encourage him to do so.</p> <p>19 There will be other documents that we did</p> <p>20 not send to you that we'll be using today</p> <p>21 though.</p> <p>22 Q. Okay. With that as background, if</p> <p>23 there is anything that I ask you, sir, that you</p> <p>24 don't understand, will you let me know?</p> <p>25 A. Yes.</p>



<p>Page 14</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are you currently employed?</p> <p>3 A. Yes.</p> <p>4 Q. By whom?</p> <p>5 A. The Skyview Group.</p> <p>6 Q. When did you become employed by the</p> <p>7 Skyview Group?</p> <p>8 A. I believe March 1st of 2021.</p> <p>9 Q. Do you have a title at Skyview?</p> <p>10 A. Yes.</p> <p>11 Q. What is your title?</p> <p>12 A. My title is chief financial officer.</p> <p>13 Q. Do you report to anybody in your</p> <p>14 role as CFO?</p> <p>15 A. I don't, no.</p> <p>16 Q. No. Is there a president or a CEO</p> <p>17 of Skyview?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. That is Scott Ellington.</p> <p>21 Q. But you don't report to</p> <p>22 Mr. Ellington; is that right?</p> <p>23 A. I don't think so.</p> <p>24 Q. Does Skyview Group –</p> <p>25 MS. DANDENEAU: Excuse me, we –</p>	<p>Page 15</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I – I – I might. I just – I</p> <p>3 don't recall.</p> <p>4 Q. Okay. Does Skyview Group provide</p> <p>5 any services to any entity directly or</p> <p>6 indirectly owned or controlled by Jim Dondero?</p> <p>7 A. Yes.</p> <p>8 Q. Can you name – is that pursuant to</p> <p>9 written contracts?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know how many contracts</p> <p>12 exist?</p> <p>13 A. Approximately six or so.</p> <p>14 Q. And is the Skyview Group made up of</p> <p>15 individuals who were formerly employees of</p> <p>16 Highland Capital Management, L.P.?</p> <p>17 A. No.</p> <p>18 Q. Do you know how many – how many –</p> <p>19 how many employees does Skyview have?</p> <p>20 A. Approximately 35.</p> <p>21 Q. And can you tell me how many of</p> <p>22 those 35 are former officers, directors, or</p> <p>23 employees of Highland Capital Management, L.P.?</p> <p>24 A. I don't know the exact number.</p> <p>25 Q. Is it more than 20?</p>
<p>Page 16</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Is it more than 30?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you tell me what portion of</p> <p>6 Skyview – Skyview's revenue is derived from</p> <p>7 entities that are directly or indirectly owned</p> <p>8 or controlled by Jim Dondero?</p> <p>9 MS. DANDENEAU: Mr. Morris, I mean,</p> <p>10 you called Mr. Waterhouse here individually</p> <p>11 for purposes of his testimony in connection</p> <p>12 with the noticed litigation. I have given</p> <p>13 you some leeway to ask him some background</p> <p>14 information about Skyview Group, but this</p> <p>15 is not a substitute for a deposition in</p> <p>16 connection with any other pending disputes</p> <p>17 that exist. And – and we agreed to accept</p> <p>18 the subpoena on the basis of he – this is</p> <p>19 testimony that he is giving in connection</p> <p>20 with the noticed litigation.</p> <p>21 I really think that you are now</p> <p>22 going a little bit far afield from the</p> <p>23 purpose of this deposition.</p> <p>24 MR. MORRIS: Okay. It is – I'm not</p> <p>25 intending to use these – the answers to</p>	<p>Page 17</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 these questions for any purpose other than</p> <p>3 this litigation. I think you understand</p> <p>4 fully why I'm asking the questions, and I</p> <p>5 just have a couple more, if you will bear</p> <p>6 with me.</p> <p>7 MS. DANDENEAU: Okay.</p> <p>8 MS. DEITSCH-PEREZ: Can we have an</p> <p>9 agreement that an objection by one is an</p> <p>10 objection for any other party here?</p> <p>11 MR. MORRIS: Sure. I would – I</p> <p>12 would encourage that, sure.</p> <p>13 MS. DEITSCH-PEREZ: Thank you.</p> <p>14 MR. MORRIS: It can't be sustained</p> <p>15 or overruled more than one time, so...</p> <p>16 Q. Mr. Waterhouse, can you answer my</p> <p>17 question, please.</p> <p>18 MS. DANDENEAU: Do you want to</p> <p>19 repeat it, Mr. Morris, for his benefit?</p> <p>20 MR. MORRIS: Sure.</p> <p>21 Q. Can you – can you tell me the</p> <p>22 approximate portion of Skyview's revenue that</p> <p>23 is derived from entities that are directly or</p> <p>24 indirectly owned or controlled by Mr. Dondero?</p> <p>25 A. I don't know the exact number.</p>

<p>Page 18</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it more than 75 percent?</p> <p>3 A. Yes.</p> <p>4 Q. Is it more than 90 percent?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Can I refer to Highland</p> <p>7 Capital Management, L.P., as Highland?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And you previously</p> <p>10 served as Highland's CFO; correct?</p> <p>11 A. Yes.</p> <p>12 Q. When did you join Highland?</p> <p>13 A. I don't recall the exact date.</p> <p>14 Q. Can you tell me what year?</p> <p>15 A. 2006.</p> <p>16 Q. When did you -- in what year did you</p> <p>17 become Highland's CFO?</p> <p>18 A. I don't recall the exact date.</p> <p>19 Q. I'm not asking you for the exact</p> <p>20 date. I'm asking you if you recall the year in</p> <p>21 which you were appointed CFO.</p> <p>22 A. I don't recall the exact year.</p> <p>23 Q. Can you tell me which years it is</p> <p>24 possible that you were appointed to CFO of</p> <p>25 Highland?</p>	<p>Page 19</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2011 or 2012.</p> <p>3 Q. Did you serve as Highland's CFO on a</p> <p>4 continuous basis from in or around 2011 or 2012</p> <p>5 until early 2021?</p> <p>6 A. Yes.</p> <p>7 Q. During that entire time you reported</p> <p>8 directly to Jim Dondero; correct?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Is there anybody else you reported</p> <p>11 to -- withdrawn.</p> <p>12 Did you report to Mr. Dondero for</p> <p>13 some portion of the time that you served as</p> <p>14 CFO?</p> <p>15 A. Yes.</p> <p>16 Q. Is there a portion of time that you</p> <p>17 don't recall who you reported to?</p> <p>18 A. Yes.</p> <p>19 Q. What portion of time do you have in</p> <p>20 your mind when you can't recall who you</p> <p>21 reported to?</p> <p>22 A. From the 2011 to -- for</p> <p>23 approximately a year or two.</p> <p>24 Q. Okay. So is it fair to say that you</p> <p>25 reported to Mr. Dondero in your capacity as CFO</p>
<p>Page 20</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 from at least 2014 until the time you left</p> <p>3 Highland?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't want to speculate the exact</p> <p>6 or what year that changed or -- so I would like</p> <p>7 to stick with my testimony.</p> <p>8 Q. Can you recall when you began</p> <p>9 reporting to Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you -- can you give me an</p> <p>12 estimate of what year you think you might have</p> <p>13 began reporting to Mr. Dondero?</p> <p>14 A. I will go back to my prior</p> <p>15 testimony.</p> <p>16 Q. Okay. There is no -- you have no</p> <p>17 ability to tell me when you began reporting to</p> <p>18 Mr. Dondero.</p> <p>19 Do I have that right?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. Do you recall who you might</p> <p>23 have reported to before you began reporting to</p> <p>24 Mr. Dondero?</p> <p>25 A. Yes.</p>	<p>Page 21</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Who might you have reported to in</p> <p>3 your capacity as CFO before you started</p> <p>4 reporting to Mr. Dondero?</p> <p>5 A. That would have been Patrick Boyce.</p> <p>6 Q. Are you aware that Highland filed</p> <p>7 for bankruptcy on October 19th, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And we refer to that as the petition</p> <p>10 date?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you hold any professional</p> <p>13 licenses, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me what professional</p> <p>16 licenses you hold?</p> <p>17 A. I'm a certified public accountant.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you have any other professional</p> <p>21 licenses or certificates?</p> <p>22 A. When you say "professional license,"</p> <p>23 that is not education?</p> <p>24 Q. Tell me -- sure. Anything other</p> <p>25 than a driver's license.</p>

<p>Page 22</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do you have any other license or</p> <p>3 certificate or certification?</p> <p>4 A. Are you asking, like, where I went</p> <p>5 to school and the –</p> <p>6 Q. I am not. I am not. I didn't say</p> <p>7 education. I didn't ask about degrees.</p> <p>8 Do you know what a license is?</p> <p>9 A. Well, yeah, I mean, a license is</p> <p>10 something you get after you receive a certain</p> <p>11 level of proficiency.</p> <p>12 Q. Do you have any licenses or</p> <p>13 certifications other than your CPA?</p> <p>14 MS. DANDENEAU: Objection, form.</p> <p>15 I assume you mean professional</p> <p>16 licenses, Mr. Morris; correct?</p> <p>17 Q. Can you answer my question, sir?</p> <p>18 A. Mr. Morris, I'm thinking. I</p> <p>19 don't – I don't think I have any others.</p> <p>20 Q. Are you familiar with an entity</p> <p>21 called Highland Capital Management Fund</p> <p>22 Advisors?</p> <p>23 A. Yes.</p> <p>24 Q. Were you ever – can we refer to</p> <p>25 that entity as HCMFA?</p>	<p>Page 23</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Were you ever employed by HCMFA?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Were you ever – did you ever hold</p> <p>6 the title of an officer or director of HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. What title did you hold?</p> <p>9 A. Treasurer.</p> <p>10 Q. When did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. I don't recall.</p> <p>13 Q. Can you tell me the year?</p> <p>14 A. I don't – I don't know the year.</p> <p>15 Q. Can you approximate the year in</p> <p>16 which you became the treasurer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Can you tell me if it was before or</p> <p>19 after 2016?</p> <p>20 A. I don't recall.</p> <p>21 Q. Are you still the – do you know if</p> <p>22 you're still the treasurer of HCMFA today?</p> <p>23 A. Today, I am the acting treasurer for</p> <p>24 HCMFA.</p> <p>25 Q. Is there a distinction between</p>
<p>Page 24</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer and acting treasurer?</p> <p>3 A. I said "acting treasurer" as I am an</p> <p>4 employee of Skyview, as you previously</p> <p>5 stated – or asked.</p> <p>6 Q. But you are the treasurer of HCMFA</p> <p>7 today; correct?</p> <p>8 A. I am – I am the acting treasurer</p> <p>9 for HCMFA.</p> <p>10 Q. How did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. Are you asking how I became the</p> <p>13 treasurer of HCMFA today?</p> <p>14 Q. How did you become appointed to</p> <p>15 serve as the treasurer of HCMFA?</p> <p>16 A. Well, in – in – in what time</p> <p>17 capacity?</p> <p>18 Q. The first time that you were</p> <p>19 appointed.</p> <p>20 A. First time. I believe I was asked</p> <p>21 to serve as treasurer for HCMFA the first time.</p> <p>22 Q. By who? Who asked you to do that?</p> <p>23 A. I don't recall.</p> <p>24 Q. Is there anything that would refresh</p> <p>25 your recollection as to who appointed you as</p>	<p>Page 25</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the treasurer of CF- – HCMFA for the first</p> <p>3 time?</p> <p>4 A. I don't – I mean, there would be</p> <p>5 some documents, some legal documents. I don't</p> <p>6 know where those are.</p> <p>7 Q. How many times have you been</p> <p>8 appointed the treasurer of HCMFA?</p> <p>9 A. I don't know.</p> <p>10 Q. Was it more than once?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you tell me any period of time</p> <p>13 since 2016 that you did not hold the title of</p> <p>14 treasurer of HCMFA?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall.</p> <p>17 Q. What are your duties and</p> <p>18 responsibilities as the treasurer of HCMFA?</p> <p>19 A. My duties are to do the best job</p> <p>20 that I can as the – as an accountant and</p> <p>21 finance guy.</p> <p>22 Q. What specific duties and</p> <p>23 responsibilities do you have as the treasurer</p> <p>24 of HCMFA?</p> <p>25 A. My duties are to do the best job</p>

<p>Page 26</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that I can as the accounting and finance person</p> <p>3 for HCMFA.</p> <p>4 Q. As the accounting and finance person</p> <p>5 for HCMFA, do you have any particular areas of</p> <p>6 responsibility?</p> <p>7 A. Yeah, it is to manage the accounting</p> <p>8 and finance function for HCMFA.</p> <p>9 Q. Would that include – do you have</p> <p>10 responsibility for overseeing HCMFA's annual</p> <p>11 audit?</p> <p>12 A. Can I please elaborate on my prior</p> <p>13 question?</p> <p>14 Q. Of course. You – you are giving</p> <p>15 answers. I'm asking questions.</p> <p>16 A. Okay. Yes, so the – it – like I</p> <p>17 said, it is to manage the accounting finance</p> <p>18 aspect, but I am, as we discussed, the</p> <p>19 treasurer. That is – being treasurer is what</p> <p>20 gives me that – that management function.</p> <p>21 Q. Does anybody report to you in your</p> <p>22 capacity as treasurer of HCMFA?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Does HCMFA have a chief financial</p> <p>25 officer?</p>	<p>Page 27</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't – I don't know.</p> <p>3 Q. You don't know?</p> <p>4 You're the treasurer of HCMFA but</p> <p>5 you don't know if HCMFA has a chief financial</p> <p>6 officer.</p> <p>7 Do I have that right?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. Have you heard of a company</p> <p>10 called NexPoint Advisors?</p> <p>11 A. Yes.</p> <p>12 Q. We will refer to that as NexPoint.</p> <p>13 Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Were you ever employed by NexPoint?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you ever hold any title with</p> <p>18 respect to the entity known as NexPoint?</p> <p>19 A. Yes.</p> <p>20 Q. What titles have you held in</p> <p>21 relation to NexPoint?</p> <p>22 A. Treasurer. I think it was only</p> <p>23 treasurer.</p> <p>24 Q. Can you tell me the approximate year</p> <p>25 you became the treasurer of NexPoint?</p>
<p>Page 28</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. Are you still the treasurer of</p> <p>4 NexPoint today?</p> <p>5 A. I am the acting treasurer for</p> <p>6 NexPoint.</p> <p>7 Q. When did your title change from</p> <p>8 treasurer to acting treasurer?</p> <p>9 A. I don't know.</p> <p>10 Q. Did your duties and responsibilities</p> <p>11 change at all when your title was changed from</p> <p>12 treasurer to acting treasurer?</p> <p>13 A. I don't – I don't believe so.</p> <p>14 Q. Why did –</p> <p>15 A. I still manage the finance and</p> <p>16 accounting function for NexPoint.</p> <p>17 Q. Why did your title change from</p> <p>18 treasurer to acting treasurer?</p> <p>19 A. I don't – I'm using the term</p> <p>20 "acting treasurer" as I'm a Skyview employee.</p> <p>21 I don't – I don't know – again, I am a – as</p> <p>22 I am the Skyview employee.</p> <p>23 Q. Okay.</p> <p>24 A. And we – we provide officer</p> <p>25 services.</p>	<p>Page 29</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And you serve as an officer of</p> <p>3 HCMFA; correct?</p> <p>4 A. I think we went over that with my</p> <p>5 testimony. Yes, I'm the acting treasurer for</p> <p>6 HCMFA.</p> <p>7 Q. And you are an officer of NexPoint;</p> <p>8 correct?</p> <p>9 A. I think – I am the acting treasurer</p> <p>10 for NexPoint Advisors.</p> <p>11 Q. And – and who appointed you acting</p> <p>12 treasurer of NexPoint Advisors?</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. Do you have any recollection of who</p> <p>15 might have appointed you the treasurer of</p> <p>16 NexPoint?</p> <p>17 A. I mean, it – it – I don't recall</p> <p>18 exactly who it was.</p> <p>19 Q. Who were the possibilities?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 Q. You can answer.</p> <p>23 A. Someone in the legal group for</p> <p>24 NexPoint. The other officers as well.</p> <p>25 Q. Have you heard of a company called</p>

<p>Page 30</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland Capital Management Services, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. We will refer to that as HCMS.</p> <p>5 Okay?</p> <p>6 A. HCMS. Okay.</p> <p>7 Q. Were you ever employed by HCMS?</p> <p>8 A. No.</p> <p>9 Q. Have you ever held any titles in</p> <p>10 relation to HCMF – I apologize – HCMS?</p> <p>11 A. Yes.</p> <p>12 Q. What titles have you held in</p> <p>13 relation to HCMS?</p> <p>14 A. Treasurer and acting treasurer.</p> <p>15 Q. When did you first become treasurer</p> <p>16 or acting treasurer of HCMS?</p> <p>17 A. I don't recall the exact dates.</p> <p>18 Q. Can you recall – can you</p> <p>19 approximate the year that you became the</p> <p>20 treasurer of HCMS?</p> <p>21 A. I don't – I don't know.</p> <p>22 Q. Are you still the treasurer of HCMS</p> <p>23 today?</p> <p>24 A. I am the acting treasurer for HCMS.</p> <p>25 Q. And are your duties and</p>	<p>Page 31</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 responsibilities as the acting treasurer for</p> <p>3 HCMS and the acting treasurer for NexPoint the</p> <p>4 same as your duties and responsibilities in</p> <p>5 your role as the acting treasurer of HCMFA?</p> <p>6 A. More or less.</p> <p>7 Q. Have you ever heard of a company</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that that</p> <p>11 entity is now known today as NexPoint Real</p> <p>12 Estate Partners?</p> <p>13 A. I did not know that.</p> <p>14 Q. All right. Can we refer to HCRE</p> <p>15 Partners as HCRE?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 Did you mean NexPoint Real Estate</p> <p>18 Partners, Mr. Morris?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DANDENEAU: Oh.</p> <p>21 MR. MORRIS: He said he wasn't</p> <p>22 familiar that it was succeeded by that</p> <p>23 entity. So –</p> <p>24 MS. DANDENEAU: Okay.</p> <p>25 MR. MORRIS: – let's go with what</p>
<p>Page 32</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the witness knows.</p> <p>3 Q. You're familiar with an entity</p> <p>4 called HCRE Partners, LLC; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So that is the entity that we</p> <p>7 will refer to as HCRE. If you're aware of any</p> <p>8 successor, that is great. If not, let's just</p> <p>9 define it as such.</p> <p>10 Have you ever been employed by HCRE</p> <p>11 or any entity that you know to have succeeded</p> <p>12 HCRE?</p> <p>13 A. No.</p> <p>14 Q. Did you ever serve as an officer or</p> <p>15 director of HCRE or any successor?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Can we refer to NexPoint and</p> <p>18 HCMFA as the advisors?</p> <p>19 A. Yes.</p> <p>20 Q. In general, the advisors provided</p> <p>21 investment advisory services to certain retail</p> <p>22 funds; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And we will refer to the retail</p> <p>25 funds that are served by the advisors</p>	<p>Page 33</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 collectively as the retail funds; is that okay?</p> <p>3 A. Okay.</p> <p>4 Q. Each of the retail funds is governed</p> <p>5 by a board; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know the people who serve</p> <p>8 on the boards of the retail funds?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. I don't know all of them.</p> <p>11 Q. Do you know whether the same people</p> <p>12 serve on the board of each of the retail funds</p> <p>13 as we've defined that term?</p> <p>14 A. Which – so when you say "retail</p> <p>15 funds" – again, I want to be – what retail</p> <p>16 funds are you referring to, because there are</p> <p>17 – there are several distinctions?</p> <p>18 What retail funds are you using when</p> <p>19 you refer to them?</p> <p>20 Q. That is why – that is why I tried</p> <p>21 to define the terms. So let me do it again.</p> <p>22 Retail funds for the purposes of</p> <p>23 this deposition means any retail fund to which</p> <p>24 either of the advisors provides advisory</p> <p>25 services. Okay?</p>



<p>Page 34</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So do you know whether the</p> <p>4 same people serve on the board of each of the</p> <p>5 retail funds?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you ever employed by any of the</p> <p>8 retail funds?</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any title with</p> <p>13 respect to any of the retail funds?</p> <p>14 A. Yes.</p> <p>15 Q. What titles do you hold –</p> <p>16 withdrawn.</p> <p>17 Do you have the same titles with</p> <p>18 respect to all of the retail funds or do</p> <p>19 they – or just something else?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 Q. Withdrawn.</p> <p>22 Do you have the same title with</p> <p>23 respect to each of the retail funds?</p> <p>24 A. No.</p> <p>25 Q. Tell me which title you have with</p>	<p>Page 35</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 respect to each retail fund.</p> <p>3 Actually, let's do it a different</p> <p>4 way. I withdraw the question.</p> <p>5 Can you give me one title you have</p> <p>6 in relation to any retail fund?</p> <p>7 A. Yes.</p> <p>8 Q. What title – what title can you</p> <p>9 give me?</p> <p>10 A. Principal executive officer.</p> <p>11 Q. Do you serve as principal executive</p> <p>12 officer for each of the retail funds?</p> <p>13 A. No.</p> <p>14 Q. Can you identify for me the retail</p> <p>15 funds in which you serve as the principal</p> <p>16 executive officer?</p> <p>17 A. Yes. Highland Funds 1, Highland</p> <p>18 Funds 2, Highland Income Fund, Highland Global</p> <p>19 Allocation Fund.</p> <p>20 Q. I'm sorry, you said "Global</p> <p>21 Allocation Fund"?</p> <p>22 A. Yes.</p> <p>23 VIDEOGRAPHER: Excuse me,</p> <p>24 Mr. Morris. This is the videographer. I'm</p> <p>25 concerned about the lighting in the</p>
<p>Page 36</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 witness' camera.</p> <p>3 Do you want to go off the record and</p> <p>4 make some adjustments?</p> <p>5 MR. MORRIS: Sure, but just for this</p> <p>6 purpose. I don't want to take a break. We</p> <p>7 just started.</p> <p>8 MS. DANDENEAU: Yeah, that is fine.</p> <p>9 That is fine. We're going to put you on</p> <p>10 mute.</p> <p>11 MR. MORRIS: All right.</p> <p>12 MS. DANDENEAU: I'm going to try to</p> <p>13 open up some of the shades.</p> <p>14 VIDEOGRAPHER: We're going off the</p> <p>15 record at 10:08 a.m.</p> <p>16 (Recess taken 10:08 a.m. to 10:11 a.m.)</p> <p>17 VIDEOGRAPHER: We are back on the</p> <p>18 record at 10:11 a.m.</p> <p>19 Q. Mr. Waterhouse, when did you become</p> <p>20 the principal executive officer of the four</p> <p>21 retail funds that you just identified?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall the approximate year</p> <p>24 that you became the principal executive officer</p> <p>25 of the four funds?</p>	<p>Page 37</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2021.</p> <p>3 Q. Did you ever hold any title with</p> <p>4 respect to any of the four funds you have just</p> <p>5 identified other than principal executive</p> <p>6 officer?</p> <p>7 A. I don't recall.</p> <p>8 Q. Is it possible that you held a</p> <p>9 position or a title with the four funds you</p> <p>10 just identified prior to 2021?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't recall if you did or</p> <p>13 not; do I have that right?</p> <p>14 A. No. You – I thought you asked, did</p> <p>15 I hold other titles.</p> <p>16 Q. Did you hold any title at the four</p> <p>17 retail funds for which you now serve as</p> <p>18 principal executive officer at any time prior</p> <p>19 to 2021?</p> <p>20 A. Yes.</p> <p>21 Q. What titles did you hold?</p> <p>22 A. I don't recall all the titles.</p> <p>23 Q. Do you recall any of the titles?</p> <p>24 A. Yes.</p> <p>25 Q. What titles do you recall holding at</p>

<p>Page 38</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 those four retail funds before 2021?</p> <p>3 A. Principal executive officer.</p> <p>4 Q. Were you the principal executive</p> <p>5 officer of the four retail funds that you have</p> <p>6 identified?</p> <p>7 A. Sorry, could you repeat the</p> <p>8 question?</p> <p>9 Q. Were you the principal executive</p> <p>10 officer for each of the four retail funds that</p> <p>11 you have identified?</p> <p>12 A. Yes.</p> <p>13 Q. When did you become the principal</p> <p>14 executive – withdrawn.</p> <p>15 Can you give me the approximate year</p> <p>16 that you became the principal executive officer</p> <p>17 for each of the four retail funds you've</p> <p>18 identified?</p> <p>19 A. I don't recall.</p> <p>20 Q. What are your duties and</p> <p>21 responsibilities as the principal executive</p> <p>22 officer of these four retail funds?</p> <p>23 A. It is to manage the finance and</p> <p>24 accounting positions.</p> <p>25 Q. So at the same time you serve as the</p>	<p>Page 39</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer of the advisors, you also serve as</p> <p>3 the principal executive officer of these four</p> <p>4 retail funds; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever hold any title with</p> <p>7 respect to any other retail fund?</p> <p>8 A. Not that I recall.</p> <p>9 Q. During the period that you served as</p> <p>10 Highland's CFO, from time to time Highland</p> <p>11 loaned money to certain of its officers and</p> <p>12 employees; correct?</p> <p>13 A. Yes.</p> <p>14 Q. During the period that you served as</p> <p>15 Highland's CFO, from time to time Highland</p> <p>16 loaned money to certain –</p> <p>17 A. Let me – let me retract that,</p> <p>18 sorry, that – you asked during the time I was</p> <p>19 CFO, Highland loaned moneys to employees. I</p> <p>20 don't – I don't recall that during my tenure</p> <p>21 of CFO.</p> <p>22 Q. You have no recollection during the</p> <p>23 time that you were the CFO of Highland of</p> <p>24 Highland ever loaning any money to any officer</p> <p>25 or director of Highland?</p>
<p>Page 40</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall during my tenure of</p> <p>3 Highland or my – as CFO of Highland – yeah,</p> <p>4 if there are any loans as CFO of Highland.</p> <p>5 Q. I'm just talking about officers and</p> <p>6 employees right now. You have no recollection</p> <p>7 of Highland ever making a loan to any of its</p> <p>8 officers or employees during the time that you</p> <p>9 served as CFO. Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. So I thought you were saying</p> <p>12 officers and employees as CFO, right, so there</p> <p>13 were – I mean, okay, yes.</p> <p>14 Q. I would ask you to listen carefully</p> <p>15 to my question. If I – if I'm not clear, let</p> <p>16 me know, but I'm really trying to be as clear</p> <p>17 as I can.</p> <p>18 A. I'm listening as carefully as I can,</p> <p>19 and you are asking very specific questions in a</p> <p>20 timeline. And I'm trying to answer your</p> <p>21 questions as specifically as I can, and I</p> <p>22 apologize if – if I'm going back. I am – you</p> <p>23 are asking very specific questions. Thank you.</p> <p>24 Q. During the period that you served as</p> <p>25 Highland's CFO, from time to time Highland</p>	<p>Page 41</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loaned money to certain corporate affiliates;</p> <p>3 correct?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. What are corporate affiliates?</p> <p>6 Q. How about the ones that are in</p> <p>7 Highland's audited financial statements under</p> <p>8 the section entitled Loans to Affiliates. Why</p> <p>9 don't we start with those. Do you have any</p> <p>10 understanding of what the phrase "affiliates"</p> <p>11 means?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I understand what affiliates are,</p> <p>14 yet affiliates can have different meanings in</p> <p>15 different contexts, so...</p> <p>16 Q. Why don't you – why don't you tell</p> <p>17 me what your understanding of the term</p> <p>18 "affiliate" is in relation to Highland Capital</p> <p>19 Management, L.P.</p> <p>20 A. Is that a – it depends on the</p> <p>21 context.</p> <p>22 Q. How about the context of making</p> <p>23 loans?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I didn't make the determination of</p>

<p>Page 42</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 who an affiliate was or is at the time those –</p> <p>3 I didn't – that wasn't my job to make a</p> <p>4 determination of who an affiliate is.</p> <p>5 Q. All right. So as the CFO of</p> <p>6 Highland, do you have any ability right now to</p> <p>7 tell me which companies that were directly or</p> <p>8 indirectly owned and/or controlled by</p> <p>9 Mr. Dondero in whole or in part received loans</p> <p>10 from Highland Capital Management, L.P.?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 MS. DEITSCH-PEREZ: Objection, form.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Identify every entity that</p> <p>15 you can think of that was directly or</p> <p>16 indirectly owned and/or controlled by</p> <p>17 Mr. Dondero in whole or in part that received a</p> <p>18 loan from Highland Capital Management, L.P.</p> <p>19 MR. RUKAVINA: Objection, legal</p> <p>20 conclusion.</p> <p>21 A. NexPoint Advisors, Highland Capital</p> <p>22 Management Fund Advisors, HCM Services,</p> <p>23 Dugaboy. Sorry, I don't think – Dugaboy</p> <p>24 doesn't fit that definition. You said owned</p> <p>25 and controlled. I don't think that that</p>	<p>Page 43</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 definition –</p> <p>3 Q. I said owned and/or controlled.</p> <p>4 A. I don't – again, I'm not – I'm not</p> <p>5 the legal expert. I don't think it controls –</p> <p>6 he controls Dugaboy, so again, I'm not the</p> <p>7 legal person.</p> <p>8 Q. I'm not asking you for a legal</p> <p>9 conclusion, sir. I'm asking you for your</p> <p>10 knowledge, okay, as the CFO – the former CFO</p> <p>11 of Highland Capital Management, other than</p> <p>12 NexPoint, HCMFA, and HCMF – HCMS, can you</p> <p>13 think of any other entities that were owned</p> <p>14 and/or controlled directly or indirectly in</p> <p>15 whole or in part by Jim Dondero who received a</p> <p>16 loan from Highland Capital Management, L.P.?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. HCRE.</p> <p>19 Q. Any others?</p> <p>20 A. That is – that is all I can think</p> <p>21 of.</p> <p>22 Q. And you're aware that from time to</p> <p>23 time while you were the CFO, Highland loaned</p> <p>24 money to Jim Dondero; correct?</p> <p>25 A. Yes.</p>
<p>Page 44</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Can we refer to the four</p> <p>3 entities that you just named and Mr. Dondero as</p> <p>4 the affiliates?</p> <p>5 A. So that would be Jim Dondero,</p> <p>6 NexPoint Advisors, Highland Capital Management</p> <p>7 Fund Advisors, and HCRE.</p> <p>8 Q. And HCMS?</p> <p>9 A. And HCMS, okay.</p> <p>10 Q. And can we refer to the loans that</p> <p>11 were given to each of those affiliates as the</p> <p>12 affiliate loans?</p> <p>13 A. Yes.</p> <p>14 Q. And is it fair to say that each of</p> <p>15 the affiliates were the borrowers under the</p> <p>16 affiliate loans as we're defining the term?</p> <p>17 MR. RUKAVINA: Objection, legal</p> <p>18 conclusion.</p> <p>19 A. The borrowers are whoever were on</p> <p>20 the notes. I don't – I don't know. I'm not</p> <p>21 the legal person.</p> <p>22 Q. But you –</p> <p>23 A. I don't know.</p> <p>24 Q. You do know, as Highland's former</p> <p>25 CFO, that each of the affiliates that you have</p>	<p>Page 45</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 identified tendered notes to Highland; correct?</p> <p>3 MR. RUKAVINA: Hey, John, will you</p> <p>4 just give me a running objection to legal</p> <p>5 conclusion to HCM –</p> <p>6 MR. MORRIS: No. No, if you want to</p> <p>7 object –</p> <p>8 MR. RUKAVINA: I will object every</p> <p>9 time. Object to legal conclusion.</p> <p>10 MR. MORRIS: That is fine.</p> <p>11 A. Sorry, can you repeat the question?</p> <p>12 Q. Are you aware that each of the –</p> <p>13 that each of the affiliates, as we have defined</p> <p>14 the term, gave to Highland a promissory note in</p> <p>15 exchange for the loans?</p> <p>16 MR. RUKAVINA: Objection to the</p> <p>17 extent that calls for a legal conclusion.</p> <p>18 A. I don't.</p> <p>19 Q. No, you don't know that?</p> <p>20 A. No, they didn't – you said they</p> <p>21 exchanged a promissory note for a loan. I</p> <p>22 don't – I don't understand that question, so I</p> <p>23 said no.</p> <p>24 Q. At the time of the bankruptcy</p> <p>25 filing, did Highland have in its possession</p>

<p>Page 46</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that were signed by each of</p> <p>3 the affiliates?</p> <p>4 A. Yes.</p> <p>5 Q. To the best of your knowledge,</p> <p>6 during the time that you served as Highland's</p> <p>7 CFO, did Highland disclose to its outside</p> <p>8 auditors all of the loans that were made to</p> <p>9 affiliates?</p> <p>10 MR. RUKAVINA: Objection, that calls</p> <p>11 for a legal conclusion.</p> <p>12 MS. DEITSCH-PEREZ: I also couldn't</p> <p>13 hear you, John, because there was some</p> <p>14 garbling on – on the – on the call.</p> <p>15 MR. MORRIS: Folks, I've got to tell</p> <p>16 you this is not going well, and I'm</p> <p>17 reserving my right –</p> <p>18 MS. DANDENEAU: John, it was just</p> <p>19 the end of that question. It was just the</p> <p>20 end of that question. I couldn't hear it</p> <p>21 either. Sorry, if you could repeat it,</p> <p>22 please.</p> <p>23 MR. MORRIS: That is less than an</p> <p>24 hour into this, but folks are trying to run</p> <p>25 out the clock, and so I'm just going to</p>	<p>Page 47</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 state that now.</p> <p>3 MS. DANDENEAU: You know, and,</p> <p>4 Mr. Morris, I really object to that. I</p> <p>5 mean –</p> <p>6 MR. MORRIS: Okay.</p> <p>7 MS. DANDENEAU: – Mr. Waterhouse</p> <p>8 just told you he's trying to listen to your</p> <p>9 questions and answer them carefully, and</p> <p>10 you have no basis for saying that.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 MS. DANDENEAU: This does not –</p> <p>13 this is not an experienced witness, so he's</p> <p>14 trying to do the best he can.</p> <p>15 Q. Mr. Waterhouse, during the time that</p> <p>16 you served as Highland's CFO, did Highland</p> <p>17 disclose to its outside auditors all of the</p> <p>18 loans that it made to each of the affiliates</p> <p>19 that you have identified?</p> <p>20 MR. RUKAVINA: Objection, legal</p> <p>21 conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your knowledge, while</p> <p>24 you were Highland's CFO, were all of the</p> <p>25 affiliate loans described in Highland's audited</p>
<p>Page 48</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financial statements?</p> <p>3 MR. RUKAVINA: Objection, legal</p> <p>4 conclusion.</p> <p>5 A. When an audit was performed, any</p> <p>6 loans that were made by Highland to the</p> <p>7 affiliates were disclosed to auditors.</p> <p>8 Q. Are you aware of any loan that was</p> <p>9 made to any affiliate that was not disclosed to</p> <p>10 the auditors?</p> <p>11 A. I'm not aware.</p> <p>12 Q. To the best of your knowledge, did</p> <p>13 each of the affiliates who were –</p> <p>14 (inaudible) – loaned from Highland execute a</p> <p>15 promissory note in connection with that loan?</p> <p>16 MR. RUKAVINA: Objection, legal</p> <p>17 conclusion.</p> <p>18 A. Sorry, you – halfway through the</p> <p>19 question it got muffled.</p> <p>20 Can you repeat that again?</p> <p>21 Q. To the best of your knowledge, did</p> <p>22 every affiliate execute a promissory note in</p> <p>23 connection with each loan that it obtained from</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, legal</p>	<p>Page 49</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conclusion.</p> <p>3 A. Yes.</p> <p>4 Q. You are not aware of any loan that</p> <p>5 any affiliate ever obtained from Highland where</p> <p>6 the affiliate did not give a promissory note in</p> <p>7 return; is that fair?</p> <p>8 A. Yes, I'm not aware.</p> <p>9 Q. And to the best of your knowledge,</p> <p>10 did Highland loan to each affiliate an amount</p> <p>11 of money equal to the principal amount of each</p> <p>12 promissory note?</p> <p>13 MR. RUKAVINA: Objection, legal</p> <p>14 conclusion.</p> <p>15 A. Yes.</p> <p>16 Q. During the time that you served as</p> <p>17 CFO, did Highland ever loan money to</p> <p>18 Mark Okada?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Did you ever see any promissory</p> <p>21 notes executed by Mark Okada?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know if Highland ever forgave</p> <p>24 any loan that it ever made to Mr. Okada?</p> <p>25 A. I don't recall.</p>

<p>Page 50</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you recall if Mr. Okada paid back</p> <p>3 all principal and interest due and owing under</p> <p>4 any loan he obtained from Highland?</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall whether – during your</p> <p>10 time as CFO, whether Highland ever loaned money</p> <p>11 to Jim Dondero?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 Mr. Dondero sign and deliver to Highland a</p> <p>15 promissory note in connection with each loan</p> <p>16 that he obtained from Highland?</p> <p>17 A. If you are referring to the</p> <p>18 promissory notes that, you know, part of</p> <p>19 Highland's records, yes.</p> <p>20 Q. Okay. You're not aware of any loan</p> <p>21 that Mr. Dondero took from Highland that wasn't</p> <p>22 backed up by – by a promissory note with a</p> <p>23 face – with a principal amount equal to the</p> <p>24 amount of the loan; correct?</p> <p>25 A. Am I aware that Jim Dondero took a</p>	<p>Page 51</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan?</p> <p>3 Q. Without giving a – let me ask a</p> <p>4 better question. I'm sorry, Mr. Waterhouse.</p> <p>5 Are you aware of any loan that</p> <p>6 Mr. Dondero obtained from Highland where he</p> <p>7 didn't give a promissory note in return?</p> <p>8 A. I'm not aware.</p> <p>9 Q. During the time that you served as</p> <p>10 Highland's CFO, did Highland ever forgive any</p> <p>11 loans, in whole or in part, that it made to</p> <p>12 Mr. Dondero?</p> <p>13 A. Not that I'm aware.</p> <p>14 Q. At the time that you served as</p> <p>15 Highland's CFO, did Highland ever forgive any</p> <p>16 loan, in whole or in part, that it made to any</p> <p>17 affiliate as we've defined the term today?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. During the time that you served as</p> <p>20 Highland's CFO, did Highland ever forgive, in</p> <p>21 whole or in part, any loan that it ever made to</p> <p>22 any officer or employee?</p> <p>23 A. Highland forgave loans to officers</p> <p>24 and employees. It may not have been at the</p> <p>25 time when my title was CFO.</p>
<p>Page 52</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And so I appreciate the</p> <p>3 distinction.</p> <p>4 Is it fair to say that, to the best</p> <p>5 of your knowledge, Highland did not forgive a</p> <p>6 loan that it made to an officer or employee</p> <p>7 after 2013?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. I don't recall.</p> <p>10 Q. To the best of your knowledge, did</p> <p>11 Highland disclose to its auditors every</p> <p>12 instance where it forgave, in whole or in part,</p> <p>13 a loan that it had made to one of its officers</p> <p>14 or employees?</p> <p>15 A. No.</p> <p>16 Q. Can you think of – can you – can</p> <p>17 you identify any loan to an officer or employee</p> <p>18 that was forgiven by Highland, in whole or in</p> <p>19 part, that was not disclosed to Highland's</p> <p>20 outside auditors?</p> <p>21 A. Look, I don't recall all of the</p> <p>22 loans and the loan forgiveness. I just know as</p> <p>23 part of the audit process there is a</p> <p>24 materiality concept.</p> <p>25 So if there were loans to employees</p>	<p>Page 53</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were of – you know, that were deemed</p> <p>3 immaterial, those items may not have been</p> <p>4 disclosed by the team to the auditors.</p> <p>5 Q. I appreciate that.</p> <p>6 Do you have an understanding as to</p> <p>7 what the level of materiality was?</p> <p>8 A. I don't recall.</p> <p>9 Q. As the CFO of Highland, to the best</p> <p>10 of your knowledge, did Highland disclose to its</p> <p>11 outside auditors every loan that was forgiven,</p> <p>12 in whole or in part, that was material as that</p> <p>13 term was defined by the outside auditors?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall where – do you</p> <p>16 recall where the definition of materiality can</p> <p>17 be found for – for this particular purpose?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. No. You – I don't determine</p> <p>20 materiality.</p> <p>21 Q. Okay. I'm just asking you if you</p> <p>22 can help me understand where it is, but I think</p> <p>23 we will find it in a few minutes.</p> <p>24 You are aware that Highland has</p> <p>25 commenced lawsuits against each of the</p>



<p>Page 54</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates, as we've defined the term, to</p> <p>3 collect under certain promissory notes; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And are you familiar with the notes</p> <p>7 that are issue – at issue in the lawsuits?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Generally familiar.</p> <p>10 Q. Can we refer to the lawsuits that</p> <p>11 Highland has commenced against the affiliates</p> <p>12 collectively as the lawsuits?</p> <p>13 A. Yes. And, again, the affiliates are</p> <p>14 NexPoint, HCMFA, HCMS, and HCRE.</p> <p>15 Q. And Mr. Dondero?</p> <p>16 A. Okay. See, that is a new – and now</p> <p>17 Mr. Dondero is included in your affiliate</p> <p>18 definition.</p> <p>19 Q. I just –</p> <p>20 A. I thought affiliates – I thought</p> <p>21 affiliates were just the four prior entities,</p> <p>22 so I just want to be clear.</p> <p>23 Q. I appreciate that. So let's –</p> <p>24 let's keep them separate and let's refer to the</p> <p>25 four corporate entities as the affiliates, and</p>	<p>Page 55</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero we will call Mr. Dondero. Okay?</p> <p>3 A. Okay. Thank you. As you can see,</p> <p>4 Mr. Morris, there is a lot of entities – a lot</p> <p>5 here. I just want to be clear.</p> <p>6 Q. Okay. Now, the affiliates of</p> <p>7 Mr. Dondero signed promissory notes that are</p> <p>8 not subject to the lawsuit.</p> <p>9 Do you understand that?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. The affiliates and Mr. Dondero</p> <p>12 signed –</p> <p>13 Q. You know what? I will skip it.</p> <p>14 That is okay. Okay.</p> <p>15 From time to time while you were</p> <p>16 Highland's CFO, payments were applied against</p> <p>17 principal and interests that were due under the</p> <p>18 notes that were tendered by the affiliates and</p> <p>19 Mr. Dondero; correct?</p> <p>20 MR. RUKAVINA: Objection to the</p> <p>21 extent that calls for a legal conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. Did Highland have a process where –</p> <p>24 whereby payments would be applied against</p> <p>25 principal and interest against the notes that</p>
<p>Page 56</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were given by the affiliates and Mr. Dondero?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe the process for me?</p> <p>5 A. The process, payment should be</p> <p>6 applied as laid out in the – in the promissory</p> <p>7 note.</p> <p>8 Q. From time to time were payments made</p> <p>9 that were not required under the promissory</p> <p>10 notes?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Who was responsible for deciding</p> <p>14 when and how much the payments would be made</p> <p>15 with respect to each of the notes that were</p> <p>16 issued by the affiliates and Mr. Dondero?</p> <p>17 A. Who was responsible for deciding how</p> <p>18 much was paid prior to the due date?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you approve of each payment that</p> <p>22 was made against principal and interest on the</p> <p>23 notes that were given by the affiliates and</p> <p>24 Mr. Dondero?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 57</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Did I approve the payments? I</p> <p>3 approve – I approve – if there was cash – if</p> <p>4 there was cash being repaid on a note payment,</p> <p>5 yes, I approved in the general sense of being</p> <p>6 made aware of the payment and the amount.</p> <p>7 Q. And are you the person who</p> <p>8 authorized Highland's employees to effectuate</p> <p>9 those payments?</p> <p>10 A. Yes.</p> <p>11 Q. When you gave the instruction to</p> <p>12 effectuate the payment, did you obtain</p> <p>13 Mr. Dondero's prior approval?</p> <p>14 A. I mean, it – I mean, it – it</p> <p>15 depends.</p> <p>16 Q. Can you think of any instance where</p> <p>17 you directed Highland's employees to make a</p> <p>18 payment of principal or interest against any</p> <p>19 note that was tendered by an affiliate or</p> <p>20 Mr. Dondero that Mr. Dondero did not approve of</p> <p>21 in advance?</p> <p>22 A. I can't recall specifically.</p> <p>23 Q. Can you identify – withdrawn.</p> <p>24 Did Mr. Dondero ever tell you that a</p> <p>25 payment that was made against principal and</p>

<p>Page 58</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 interest due under one of the notes that was</p> <p>3 tendered by an affiliate or himself should not</p> <p>4 have been made?</p> <p>5 A. Yes.</p> <p>6 Q. Can you identify the payment for me?</p> <p>7 A. It would be for -- for NexPoint</p> <p>8 Advisors.</p> <p>9 Q. Okay. And when did Mr. Dondero tell</p> <p>10 you that a payment that you had initiated on</p> <p>11 behalf of NexPoint should not have been made?</p> <p>12 A. I wasn't initiating payment. It was</p> <p>13 in the context of the -- I think you used this</p> <p>14 term, "the advisors," so NexPoint Advisors and</p> <p>15 Highland Capital Management Fund Advisors had</p> <p>16 overpaid on certain agreements with Highland</p> <p>17 Capital Management, L.P. And as a part of that</p> <p>18 process, the advisors -- what I was told at the</p> <p>19 time were in talks and negotiations and</p> <p>20 discussions with Highland Capital Management,</p> <p>21 L.P., on offsets in relation to those</p> <p>22 overpayments.</p> <p>23 Q. When did this conversation take</p> <p>24 place?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 59</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall what year it was?</p> <p>4 A. Yes.</p> <p>5 Q. What year did the conversation with</p> <p>6 Mr. Dondero take place that you just described?</p> <p>7 A. 2020.</p> <p>8 Q. Okay. Do you remember if it was</p> <p>9 December 2020?</p> <p>10 A. It -- it -- I don't -- I don't</p> <p>11 recall what month specifically, but it would</p> <p>12 have been November or December.</p> <p>13 Q. And we're talking here about a</p> <p>14 payment of principal and/or interest that was</p> <p>15 due -- withdrawn.</p> <p>16 We're talking here about a payment</p> <p>17 of principal and interest that was applied</p> <p>18 against NexPoint's note; correct?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall what that payment</p> <p>21 consisted of.</p> <p>22 Q. Is it possible that the payment you</p> <p>23 have in mind related to the shared services</p> <p>24 agreement?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 60</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Are you certain that the payment --</p> <p>4 that the payment that you have in mind related</p> <p>5 to the promissory note that NexPoint issued in</p> <p>6 favor of Highland?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Other than that one payment,</p> <p>10 can you identify any other instance where</p> <p>11 Mr. Dondero told you that a payment should not</p> <p>12 have been applied against principal and</p> <p>13 interest under any promissory note tendered by</p> <p>14 any affiliate or Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Objection to</p> <p>17 form.</p> <p>18 A. Not that I recall.</p> <p>19 Q. Thank you very much.</p> <p>20 Do you know if Mr. Dondero approved</p> <p>21 in advance of each loan made to each affiliate</p> <p>22 and himself during the time that you were the</p> <p>23 CFO?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 61</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, generally.</p> <p>3 Q. Can you identify any loan that was</p> <p>4 ever made to an affiliate or to Mr. Dondero</p> <p>5 that Mr. Dondero did not approve of in advance?</p> <p>6 A. Other than the ones that are in</p> <p>7 dispute, I'm not aware.</p> <p>8 Q. Do you believe that Mr. Dondero did</p> <p>9 not approve of each of the loans that are in</p> <p>10 dispute in advance of the time that the loan</p> <p>11 was made?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Given what is in the dispute, you</p> <p>14 know, and -- and -- and the way things might --</p> <p>15 yeah, I mean...</p> <p>16 Q. I am not asking about the dispute,</p> <p>17 and it was probably my mistake to follow you</p> <p>18 there.</p> <p>19 Were you aware of every loan made by</p> <p>20 Highland to each of its affiliates and</p> <p>21 Mr. Dondero while you were the CFO at the time</p> <p>22 each loan was made?</p> <p>23 A. Was I aware of every loan, yes.</p> <p>24 Q. Okay. And if you put yourself back</p> <p>25 in time, do you recall that any of the loans</p>

<p>Page 62</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were made to one of the affiliates or</p> <p>3 Mr. Dondero during the time that you were the</p> <p>4 CFO was made without Mr. Dondero's prior</p> <p>5 knowledge and approval?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Thank you. In fact, do you – as</p> <p>8 the CFO, would you have allowed Highland to</p> <p>9 loan money to an affiliate or to Mr. Dondero</p> <p>10 without obtaining Mr. Dondero's prior approval?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I can't – there was so many times</p> <p>13 over the years, I can't speak for every single</p> <p>14 one, but generally, yes, I – I spoke to him.</p> <p>15 Q. You – you never – you never –</p> <p>16 withdrawn. I will just take that.</p> <p>17 Can you recall any payment that was</p> <p>18 ever made against principal and interest on a</p> <p>19 note that was issued in favor of Highland by an</p> <p>20 affiliate or Mr. Dondero that you personally</p> <p>21 did not know about in advance?</p> <p>22 A. There are so many through the years,</p> <p>23 I don't – I don't – I don't recall every</p> <p>24 single one.</p> <p>25 Q. Okay. Can you identify any payment</p>	<p>Page 63</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that was made against principal and interest on</p> <p>3 any note tendered by any affiliate or</p> <p>4 Mr. Dondero that you didn't know about in</p> <p>5 advance?</p> <p>6 A. I don't recall.</p> <p>7 Q. Other than Mr. Dondero – withdrawn.</p> <p>8 Did anybody at Highland have the</p> <p>9 authority to make a payment against principal</p> <p>10 and interest due under a loan given to the</p> <p>11 affiliates and Mr. Dondero without your</p> <p>12 knowledge and approval?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Sorry, there was – to make a</p> <p>15 payment on an affiliate loan, what you are</p> <p>16 saying would it require my knowledge and</p> <p>17 approval, yes.</p> <p>18 Q. Okay. I appreciate that. Thank</p> <p>19 you.</p> <p>20 Did anybody at Highland have the</p> <p>21 authority, to the best of your knowledge, to</p> <p>22 effectuate a loan to an affiliate without</p> <p>23 Mr. Dondero's prior knowledge and approval?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I can't speak for all, but</p>
<p>Page 64</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 generally, yes.</p> <p>3 Q. Did you personally communicate with</p> <p>4 Mr. Dondero to let him know each time a payment</p> <p>5 of principal or interest was being made against</p> <p>6 any note that was tendered by an affiliate or</p> <p>7 Mr. Dondero to Highland?</p> <p>8 A. I don't – are you saying, did I let</p> <p>9 Mr. Dondero know if a payment was made on any</p> <p>10 affiliate or loan to Mr. Dondero? I mean,</p> <p>11 not – not every – no.</p> <p>12 Q. Let me ask it this way: Did you</p> <p>13 have a practice of informing Mr. Dondero when</p> <p>14 payments were made against principal and</p> <p>15 interest on any note that was tendered by an</p> <p>16 affiliate or Mr. Dondero?</p> <p>17 MS. DEITSCH-PEREZ: Objection to</p> <p>18 form.</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. No, I did not.</p> <p>21 Q. Did Mr. Dondero ever tell you that a</p> <p>22 payment of principal or interest had been made</p> <p>23 against a note that was tendered by an</p> <p>24 affiliate or himself that he had been unaware</p> <p>25 of?</p>	<p>Page 65</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you aware that Mr. Dondero and</p> <p>4 the affiliates – withdrawn.</p> <p>5 Are you aware that Mr. Dondero</p> <p>6 NexPoint, HCRE, and HCMS all contend that they</p> <p>7 do not have to pay on any of the notes they</p> <p>8 issued because they are subject to an oral</p> <p>9 agreement between Mr. Dondero and Nancy</p> <p>10 Dondero, in her capacity as the trustee of the</p> <p>11 Dugaboy Investment Trust?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I didn't – I didn't – I didn't</p> <p>14 know that it was all notes.</p> <p>15 Q. Okay. Are you – did you ever learn</p> <p>16 that there was an oral agreement between Jim</p> <p>17 Dondero and Nancy Dondero pertaining to any</p> <p>18 notes issued by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 the terms of that agreement?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the</p>

<p>Page 66</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 terms of the agreement?</p> <p>3 A. That there were certain milestones</p> <p>4 that had to be reached.</p> <p>5 Q. Do you have any understanding of the</p> <p>6 terms of the agreement between Mr. Dondero and</p> <p>7 Nancy Dondero concerning any of the notes</p> <p>8 issued by the affiliates or Mr. Dondero other</p> <p>9 than that there have to be milestones reached?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. There are milestones, I found out</p> <p>13 yesterday, or there was some –</p> <p>14 MS. DANDENEAU: Okay. I'm just</p> <p>15 going to object to the extent that you</p> <p>16 learned anything in conversations with</p> <p>17 counsel, please don't reveal – that is</p> <p>18 privileged, and don't reveal any privileged</p> <p>19 communications.</p> <p>20 THE WITNESS: Okay.</p> <p>21 A. So I'm not aware of anything else.</p> <p>22 Q. Do you know what the milestones</p> <p>23 were?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't.</p>	<p>Page 67</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know anything about – do you</p> <p>3 know what promissory notes the agreement</p> <p>4 covered?</p> <p>5 A. I don't.</p> <p>6 Q. Do you know if – if Jim and Nancy</p> <p>7 Dondero entered into one agreement or more than</p> <p>8 one agreement?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know if the agreement is in</p> <p>13 writing?</p> <p>14 A. I don't know.</p> <p>15 Q. How did you learn of the existence</p> <p>16 of the agreement?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 Again –</p> <p>19 A. I don't – I don't recall who told</p> <p>20 me.</p> <p>21 Q. You have no recollection of who told</p> <p>22 you about this agreement between Jim and Nancy</p> <p>23 Dondero?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p>Page 68</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall how you learned of the</p> <p>4 agreement?</p> <p>5 Was it in a meeting? Was it in a</p> <p>6 phone call? Was it in an email?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you recall when you learned of</p> <p>9 the agreement?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you recall what year you learned</p> <p>12 of the agreement?</p> <p>13 A. In – look, I mean, there are so</p> <p>14 many notes. I may be getting – I believe it</p> <p>15 was 2020.</p> <p>16 Q. All right. I'm not asking about</p> <p>17 notes, sir. I'm asking about the agreement</p> <p>18 that you testified you knew about between Jim</p> <p>19 and Don- – Nancy Dondero. Okay.</p> <p>20 Do you understand my question now?</p> <p>21 Should I ask my question again?</p> <p>22 A. Yeah, sure. Go ahead.</p> <p>23 Q. I'm going to use the word</p> <p>24 "agreement" to refer to the agreement that</p> <p>25 Mr. Dondero and Nancy Dondero entered into</p>	<p>Page 69</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 where you understood that certain milestones</p> <p>3 had to be reached. Okay?</p> <p>4 A. Uh-huh.</p> <p>5 MS. DANDENEAU: Objection.</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 MR. MORRIS: Just defining a term,</p> <p>9 what is the objection.</p> <p>10 MS. DEITSCH-PEREZ: The objection –</p> <p>11 MR. MORRIS: I will move on. I will</p> <p>12 move on.</p> <p>13 MS. DEITSCH-PEREZ: John –</p> <p>14 Q. Sir, are you okay with that</p> <p>15 definition of agreement?</p> <p>16 A. Okay.</p> <p>17 Q. Okay. So you don't recall who –</p> <p>18 who informed you of the existence of the</p> <p>19 agreement; is that right?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall who told you the</p> <p>22 terms of the agreement.</p> <p>23 Do I have that right?</p> <p>24 A. Correct.</p> <p>25 Q. And you don't recall if you learned</p>

<p>Page 70</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 about the agreement in a meeting, through an</p> <p>3 email, or through a phone call.</p> <p>4 Do I have that right?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you tell me when you learned of</p> <p>7 the agreement?</p> <p>8 A. I don't – I don't – I don't</p> <p>9 remember specifically.</p> <p>10 Q. Can you tell me if you learned of</p> <p>11 the agreement before or after the petition</p> <p>12 date?</p> <p>13 A. It would have been – it would have</p> <p>14 been after.</p> <p>15 Q. Can you tell me if you learned of</p> <p>16 the agreement before or after January 9th,</p> <p>17 2020?</p> <p>18 A. It would have been after.</p> <p>19 Q. Can you tell me if you learned of</p> <p>20 the agreement before or after you left Highland</p> <p>21 Capital Management in February of 2021?</p> <p>22 A. I don't – I don't – I don't know.</p> <p>23 Q. It is possible that you learned of</p> <p>24 it while you were a Highland employee.</p> <p>25 Do I have that right?</p>	<p>Page 71</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't remember the – I mean, it</p> <p>3 was sometime in 2021. I don't remember when.</p> <p>4 Q. All right. So to the best of your</p> <p>5 recollection, it was in 2021 but you don't</p> <p>6 recall if it was before or after you ceased to</p> <p>7 be a Highland employee.</p> <p>8 Do I have that right?</p> <p>9 A. Yeah, I mean, it was – it was</p> <p>10 likely after I was – after I left Highland</p> <p>11 because, if I put myself back into the last</p> <p>12 days of – of 2021, it was – you know, the</p> <p>13 communications with Mr. Dondero were – were –</p> <p>14 were – there weren't as many communications</p> <p>15 because of the circumstances.</p> <p>16 Q. And so based on that you believe</p> <p>17 that it is most likely that you learned of this</p> <p>18 agreement sometime after you left Highland</p> <p>19 employment?</p> <p>20 A. I wouldn't use the term "most</p> <p>21 likely." I don't recall specifically. I don't</p> <p>22 recall.</p> <p>23 Q. Do you recall ever telling Jim Seery</p> <p>24 about this agreement?</p> <p>25 A. No, I don't – I didn't tell</p>
<p>Page 72</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Jim Seery.</p> <p>3 Q. Did you tell anybody at DSI about</p> <p>4 this agreement?</p> <p>5 A. No.</p> <p>6 Q. Did you tell any of Highland's</p> <p>7 independent directors about this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you tell anybody at Pachulski</p> <p>10 Stang Ziehl &amp; Jones about this agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell any employee of</p> <p>13 Highland about this agreement?</p> <p>14 A. No.</p> <p>15 MS. DANDENEAU: Mr. Morris, it has</p> <p>16 been an hour and a half. Is this a good</p> <p>17 time for a break?</p> <p>18 MR. MORRIS: Sure.</p> <p>19 Q. Mr. Waterhouse, I will just remind</p> <p>20 you that during the break please don't speak</p> <p>21 with anybody about the deposition, the</p> <p>22 substance of your testimony or anything else</p> <p>23 concerning the deposition. Okay?</p> <p>24 A. Yes.</p> <p>25 MR. MORRIS: So it is 11:02. We're</p>	<p>Page 73</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 at 11:02 your time. Let's come back, I</p> <p>3 guess, at 15 – at 11:15 your time.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record at 11:02 a.m.</p> <p>6 (Recess taken 11:02 a.m. to 11:20 a.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 11:20 a.m.</p> <p>9 Q. Mr. Waterhouse, did you speak with</p> <p>10 anybody during the break about this deposition?</p> <p>11 A. No.</p> <p>12 MS. DANDENEAU: Other than – other</p> <p>13 than his counsel.</p> <p>14 Q. Did you speak to your counsel about</p> <p>15 the substance of your deposition today?</p> <p>16 A. No, I didn't bring it up.</p> <p>17 Q. I didn't ask you if you brought it</p> <p>18 up. I asked you if you had any conversation</p> <p>19 with your lawyer about the substance of your</p> <p>20 deposition.</p> <p>21 MS. DANDENEAU: Yes, he did.</p> <p>22 Q. Can you tell me what the – you</p> <p>23 discussed?</p> <p>24 MS. DANDENEAU: No, I object to</p> <p>25 that. He's not going to answer. That is a</p>



<p>Page 74</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 privileged conversation.</p> <p>3 MR. MORRIS: So I just want to make</p> <p>4 sure that I understand. During the break</p> <p>5 you spoke with your client about the</p> <p>6 substance of this deposition; is that</p> <p>7 right?</p> <p>8 MS. DANDENEAU: Yes, John.</p> <p>9 MR. MORRIS: And you refuse – you</p> <p>10 refuse to let your client tell me what was</p> <p>11 discussed; is that right?</p> <p>12 MS. DANDENEAU: That's correct.</p> <p>13 MR. MORRIS: You know, I had given</p> <p>14 the instruction prior to the break not to</p> <p>15 speak with counsel. I would have</p> <p>16 appreciated –</p> <p>17 MS. DANDENEAU: No, you didn't –</p> <p>18 actually, that is not true, Mr. Morris.</p> <p>19 You said not to speak with anyone. We</p> <p>20 never have interpreted that to mean</p> <p>21 conversations with counsel. That's never</p> <p>22 been – I have never, ever heard that</p> <p>23 instruction.</p> <p>24 MR. MORRIS: Okay. We will – we</p> <p>25 will – we will deal with it when and if we</p>	<p>Page 75</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have to.</p> <p>3 Q. Mr. Waterhouse, after learning about</p> <p>4 the agreement, did you ask anybody if the</p> <p>5 agreement was reflected in a writing?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Did you ask anybody if the terms of</p> <p>9 the agreement were memorialized anywhere?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: What is the –</p> <p>12 A. No.</p> <p>13 MS. DANDENEAU: Well, because you</p> <p>14 keep talking about this agreement and I –</p> <p>15 I – I think, Mr. Morris, that is really</p> <p>16 not clear what you mean by "the agreement."</p> <p>17 And maybe you can just go back and restate</p> <p>18 what that is.</p> <p>19 MR. MORRIS: Okay. Your client has</p> <p>20 agreed with me twice on the definition, but</p> <p>21 I will try one more time.</p> <p>22 Q. Mr. Waterhouse, do you understand</p> <p>23 that when I use the term "agreement," I'm</p> <p>24 referring to the agreement between Jim and</p> <p>25 Nancy Dondero concerning certain promissory</p>
<p>Page 76</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes where you learned that one of the terms</p> <p>3 of the agreement was milestones reached?</p> <p>4 A. Okay.</p> <p>5 Q. And did you understand that that was</p> <p>6 the – the agreement that we were referring to</p> <p>7 every time we used the word "agreement" in this</p> <p>8 deposition?</p> <p>9 A. I don't know anything about this</p> <p>10 agreement. So, look, I do – it – I don't</p> <p>11 know whether –</p> <p>12 Q. Let's – let's try this again.</p> <p>13 A. Yeah. Look, I don't know what this</p> <p>14 agreement relates.</p> <p>15 MS. DEITSCH-PEREZ: John, John –</p> <p>16 Q. Let me try –</p> <p>17 MS. DEITSCH-PEREZ: John, please let</p> <p>18 the witness finish.</p> <p>19 MR. MORRIS: Please stop. Please</p> <p>20 stop. Please stop talking.</p> <p>21 MS. DEITSCH-PEREZ: No, you stop.</p> <p>22 Let the witness –</p> <p>23 MR. MORRIS: Stop talking.</p> <p>24 MS. DEITSCH-PEREZ: – finish – you</p> <p>25 interrupted him.</p>	<p>Page 77</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: You know what, you</p> <p>3 guys, this is really wrong. It is really,</p> <p>4 really wrong. Okay?</p> <p>5 I had the witness agree not once,</p> <p>6 but twice to the definition of agreement.</p> <p>7 Okay? I'm going to try and do it a third</p> <p>8 time.</p> <p>9 MS. DANDENEAU: No, but, please,</p> <p>10 John, really –</p> <p>11 MR. MORRIS: No, please stop</p> <p>12 talking. Please. It is my deposition.</p> <p>13 Object to questions.</p> <p>14 MS. DANDENEAU: No, but also you</p> <p>15 instructed him that – that if you were</p> <p>16 going – if you were interrupting him, that</p> <p>17 he should remind you that you're</p> <p>18 interrupting him and – and –</p> <p>19 MR. MORRIS: Let him do that. Let</p> <p>20 him do that.</p> <p>21 MS. DANDENEAU: Okay. Well, you –</p> <p>22 MR. MORRIS: Please stop talking.</p> <p>23 A. Okay. I don't know any of the</p> <p>24 details of these agreements. I don't know</p> <p>25 anything about them. I heard – someone – I</p>

<p>Page 78</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know who, I don't know when, as you</p> <p>3 asked, sometime in '21, someone told me about</p> <p>4 this – or I don't honestly know – I don't</p> <p>5 even recall exactly how I was made aware of</p> <p>6 this, but I was. I don't know – I don't know</p> <p>7 any of these details, and I'm getting – again,</p> <p>8 there is, you know, I – I – I had a passing</p> <p>9 conversation with – with Jim at some point</p> <p>10 on – on some – on the executive comp, and I'm</p> <p>11 getting confused of what is what, because</p> <p>12 again, I don't know any of these details.</p> <p>13 Q. Okay. Let me try again,</p> <p>14 Mr. Waterhouse, and I apologize.</p> <p>15 Are you aware of any agreement</p> <p>16 between Jim Dondero and Nancy Dondero</p> <p>17 concerning any promissory note that was given</p> <p>18 to Highland by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I've heard of an agreement. That</p> <p>22 is – that is – I mean, if you are using aware</p> <p>23 as heard, sure.</p> <p>24 Q. And you understand that one of the</p> <p>25 terms of the agreement is that it was based on</p>	<p>Page 79</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 milestones that had to be reached; is that</p> <p>3 right?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. That was one of the words that was</p> <p>6 used when I heard about it, yes.</p> <p>7 Q. And when you heard about this</p> <p>8 agreement that had a term in it concerning</p> <p>9 milestones reached, did you ask the person who</p> <p>10 was telling you about the agreement whether or</p> <p>11 not it was in writing?</p> <p>12 A. I did not.</p> <p>13 Q. Did you ask any questions at all?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. Not that I recall.</p> <p>16 Q. But do you understand that going</p> <p>17 forward, we're going to refer to the agreement</p> <p>18 as the agreement that you just described that</p> <p>19 you were –</p> <p>20 MS. DANDENEAU: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You don't have any personal</p> <p>23 knowledge concerning the terms of the</p> <p>24 agreement; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 80</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 Q. You can answer.</p> <p>4 A. I don't – I heard about the</p> <p>5 agreement. I don't know anything – I heard</p> <p>6 there was an agreement. That is – again, as I</p> <p>7 testified before – I said before, heard about</p> <p>8 it, don't know the details. I believe it was</p> <p>9 sometime this year.</p> <p>10 Q. Do you have any personal knowledge</p> <p>11 about the terms of the agreement, sir?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Other than what I have previously</p> <p>14 discussed, I don't – I don't know.</p> <p>15 Q. Did – did Mr. Dondero tell you</p> <p>16 about the existence of the agreement?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall the source of your</p> <p>19 information when you learned about the</p> <p>20 agreement?</p> <p>21 A. No, I don't – I don't recall. I</p> <p>22 don't remember. I just – I heard about it</p> <p>23 generally. I don't remember – I don't</p> <p>24 remember who, how, if, how. I don't remember.</p> <p>25 Q. You know, Mr. Waterhouse, I just</p>	<p>Page 81</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 want to be clear that I never would have asked</p> <p>3 you to appear at this deposition if your name</p> <p>4 hadn't been included in responses to discovery</p> <p>5 as to somebody with knowledge about the – who</p> <p>6 was told about the existence of the agreement.</p> <p>7 That is what prompted me do this,</p> <p>8 and I really do feel compelled to tell you that</p> <p>9 I otherwise would never have called you as a</p> <p>10 witness. So I regret that you're being put</p> <p>11 through this today. I had no intention of</p> <p>12 burdening you or taking your time, but that is</p> <p>13 the reason that we issued the subpoena is</p> <p>14 because certain of the defendants identified</p> <p>15 you as somebody –</p> <p>16 MS. DEITSCH-PEREZ: Mr. Morris, you</p> <p>17 are here to ask questions, not to have –</p> <p>18 MR. MORRIS: I feel badly for the</p> <p>19 guy. I really do.</p> <p>20 MS. DEITSCH-PEREZ: I'm sure you do.</p> <p>21 MR. MORRIS: I do. Stop.</p> <p>22 MS. DEITSCH-PEREZ: You stop.</p> <p>23 MR. MORRIS: I'm allowed.</p> <p>24 MS. DEITSCH-PEREZ: No, you're not</p> <p>25 allowed to have a chat with the witness.</p>

<p>Page 82</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Well, I hope that you</p> <p>3 appreciate what I'm saying here,</p> <p>4 Mr. Waterhouse.</p> <p>5 MS. DANDENEAU: All right. Let's go</p> <p>6 ahead and ask questions, and again, you're</p> <p>7 entitled to probe his – his knowledge</p> <p>8 of – whatever knowledge he has about</p> <p>9 this – this agreement and –</p> <p>10 MR. MORRIS: That is what I'm doing.</p> <p>11 MS. DANDENEAU: – he will answer</p> <p>12 the questions to the best that he can.</p> <p>13 MR. MORRIS: That is what I'm doing.</p> <p>14 Q. Mr. Waterhouse, I take it you do not</p> <p>15 know which promissory notes issued by which</p> <p>16 affiliates or Mr. Dondero are the subject of</p> <p>17 this agreement; do I have that right?</p> <p>18 A. Yes, I don't – I don't know.</p> <p>19 Q. Do you know of any way to determine</p> <p>20 which promissory notes issued by the affiliates</p> <p>21 and Mr. Dondero are the subject of this</p> <p>22 agreement other than asking Jim or Nancy</p> <p>23 Dondero?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't know.</p>	<p>Page 83</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever make –</p> <p>3 A. I don't know anything about these</p> <p>4 agreements.</p> <p>5 Q. Did you ever make any effort to</p> <p>6 determine which promissory notes are subject to</p> <p>7 this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever ask anybody which</p> <p>10 promissory notes are subject to this agreement?</p> <p>11 A. No.</p> <p>12 Q. Do you know if there is a list</p> <p>13 anywhere of the promissory notes that are</p> <p>14 subject to this agreement?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Have you ever seen the terms of the</p> <p>17 agreement written down anywhere?</p> <p>18 A. No.</p> <p>19 Q. Have you ever asked anybody whether</p> <p>20 the terms of the agreement were written down</p> <p>21 anywhere?</p> <p>22 A. I have not.</p> <p>23 Q. Did learning about the agreement</p> <p>24 cause you to do anything in response?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 84</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did anybody ever describe to you the</p> <p>4 nature of the milestones that you referred to</p> <p>5 earlier?</p> <p>6 A. No, I don't – I don't have any</p> <p>7 details of this.</p> <p>8 Q. That is fine.</p> <p>9 PricewaterhouseCoopers served as</p> <p>10 Highland's outside auditors prior to the</p> <p>11 petition date; correct?</p> <p>12 A. Yes.</p> <p>13 Q. You refer to PricewaterhouseCoopers</p> <p>14 as PwC?</p> <p>15 A. Yes.</p> <p>16 Q. PricewaterhouseCoopers audited</p> <p>17 Highland's financial statements on an annual</p> <p>18 basis; correct?</p> <p>19 A. During my – during my time as – as</p> <p>20 CFO, yes, PricewaterhouseCoopers was the</p> <p>21 auditor.</p> <p>22 Q. Do you know why Highland had its</p> <p>23 annual financial statements audited each year?</p> <p>24 A. Generally.</p> <p>25 Q. Tell me your general understanding</p>	<p>Page 85</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as to the reason why Highland had its annual</p> <p>3 financial statements audited each year.</p> <p>4 A. From – from time to time, they were</p> <p>5 used – or asked for, as part of diligence or</p> <p>6 transactions or – or things of that nature.</p> <p>7 Q. And were they given to third parties</p> <p>8 for purposes of diligence or transactions from</p> <p>9 time to time?</p> <p>10 A. As far as I'm aware, yes.</p> <p>11 Q. And was it your understanding as the</p> <p>12 CFO that the third parties who received the</p> <p>13 financial statements in diligence or</p> <p>14 transactions was going to rely on those?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't know – I don't know gen –</p> <p>17 I don't know specifically what they were going</p> <p>18 to rely on. You know, we would get requests</p> <p>19 for audited financial statements. I don't know</p> <p>20 what they were relying on.</p> <p>21 Q. And –</p> <p>22 A. You would have to ask them.</p> <p>23 Q. Did you personally play a role in</p> <p>24 PwC's annual audit and the conduct of the</p> <p>25 audit?</p>

<p>Page 86</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. During my tenure as CFO, I played a</p> <p>4 very minimal role.</p> <p>5 Q. What was the minimal role that you</p> <p>6 played?</p> <p>7 A. You know, again, it was – it was to</p> <p>8 check in with the team, to make sure that, you</p> <p>9 know, audit – the deadlines were being hit,</p> <p>10 information was being presented to the auditors</p> <p>11 in a – in a timely fashion, but, you know,</p> <p>12 other than that, it was a very capable team</p> <p>13 that are still current employees of Highland</p> <p>14 and, you know, they – they conducted 99</p> <p>15 percent of – look, I don't want to give</p> <p>16 percentages. I mean, this is – but I – I –</p> <p>17 I played a minimal role towards the end.</p> <p>18 Before during my earlier years as</p> <p>19 CFO, I did more, and then as time went on, I</p> <p>20 did less in it.</p> <p>21 Q. Okay. Was there a person at</p> <p>22 Highland who was responsible for overseeing</p> <p>23 Highland's participation in PwC's audit during</p> <p>24 the time that you were the CFO?</p> <p>25 A. Yeah. I mean, there was – there</p>	<p>Page 87</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 was a – there was a point – it varies. It</p> <p>3 varies by year, in function, in time and, you</p> <p>4 know, depending on the request, but yes, I</p> <p>5 mean, there is – there is – there is</p> <p>6 generally a point person of communication.</p> <p>7 Q. And who was the point person from</p> <p>8 2016 until the time you left Highland?</p> <p>9 A. I don't – I don't know</p> <p>10 specifically, but it would have been, you</p> <p>11 know – you know, someone on the corporate</p> <p>12 accounting team.</p> <p>13 Q. And was there a head of the</p> <p>14 corporate accounting team?</p> <p>15 A. Yes, so – yes.</p> <p>16 Q. Who was the head of corporate</p> <p>17 accounting for the five years prior to the time</p> <p>18 you left Highland?</p> <p>19 A. I don't – if you're asking from</p> <p>20 2016 on, I don't – it was Dave Klos, but,</p> <p>21 again, there was – there was changes to the</p> <p>22 team and the reporting structure. I don't</p> <p>23 remember exactly when that happened during –</p> <p>24 you know, over the last – since 2016.</p> <p>25 Q. Did the folks who participated and</p>
<p>Page 88</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 ran the audit all report to you, directly or</p> <p>3 indirectly?</p> <p>4 A. Yes.</p> <p>5 Q. And did you have any responsibility</p> <p>6 for making sure that the audit report was</p> <p>7 accurate before it was finalized?</p> <p>8 A. Yeah. I mean, you know, that –</p> <p>9 that is – my responsibility to the auditors</p> <p>10 was – again, is – and the CFO is to – we are</p> <p>11 providing accurate financial statements; right?</p> <p>12 And – and – and as part of any</p> <p>13 audit, we disclose all relevant information as</p> <p>14 part of any audit.</p> <p>15 Q. Okay. And as the CFO, did you take</p> <p>16 steps to make sure that the audit report was</p> <p>17 accurate?</p> <p>18 A. I mean, I would say in a general</p> <p>19 sense, yes. But, again, I mean, I had a</p> <p>20 very – I had a very capable and competent</p> <p>21 team. I wasn't managing them.</p> <p>22 You know, part of what I do is I let</p> <p>23 the team – I want managers to grow. I want</p> <p>24 managers to have rope. And that is – you</p> <p>25 know, I'm not a stand-behind-you type of guy.</p>	<p>Page 89</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 If you – if you talk to my team members, I'm</p> <p>3 not micromanaging people. I want people to</p> <p>4 learn and grow in their function so they can go</p> <p>5 on and do bigger and better things with their</p> <p>6 careers.</p> <p>7 And so, yes, generally I was</p> <p>8 responsible for it, but I wanted the team to</p> <p>9 learn and grow and be responsible for the bulk</p> <p>10 of the audit.</p> <p>11 Q. Did you personally review each audit</p> <p>12 report before it was finalized to satisfy</p> <p>13 yourself that it was accurate?</p> <p>14 A. I don't – I don't recall, you know,</p> <p>15 for every single – we're talking 2016, there</p> <p>16 would have been three years, 2016 to '17, '18.</p> <p>17 I don't – we're – we're going back</p> <p>18 five years-plus. I don't – you know, I don't</p> <p>19 recall.</p> <p>20 Q. Did you have a practice that you</p> <p>21 employed to make sure that you were satisfied</p> <p>22 that Highland's audit reports were true and</p> <p>23 accurate to the best of your knowledge?</p> <p>24 A. I mean, our – the practice was set</p> <p>25 up with our – the – the practice to put</p>

<p>Page 90</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 together accurate audited or accurate financial</p> <p>3 statements is to your control environment.</p> <p>4 So, you know, the -- so the practice</p> <p>5 was to maintain a stable control environment</p> <p>6 which then the output is -- is accurate</p> <p>7 financial statements.</p> <p>8 So -- so, you know, if I was</p> <p>9 comfortable that the control environment was</p> <p>10 operating, then, you know, that would dictate</p> <p>11 how I would -- you know, what I might or might</p> <p>12 not do in a given year.</p> <p>13 Q. Okay. Do you recall ever being</p> <p>14 uncomfortable with the control environment</p> <p>15 during the period that you served as CFO?</p> <p>16 A. Yeah. I mean, look, yes, there are</p> <p>17 times -- you know, nothing is perfect. So</p> <p>18 there were -- there were times when, yes, you</p> <p>19 know -- there are times I learned I was</p> <p>20 uncomfortable with the control environment, and</p> <p>21 that is part of the management of the process</p> <p>22 and having, you know -- and -- and working</p> <p>23 through whatever obstacles present themselves.</p> <p>24 Q. Okay. Were you ever uncomfortable</p> <p>25 with the control process as it related to</p>	<p>Page 91</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reporting and disclosures of loans to</p> <p>3 affiliates and Mr. Dondero?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't -- I don't recall --</p> <p>6 Q. So you don't recall --</p> <p>7 A. -- the --</p> <p>8 MS. DANDENEAU: Mr. Morris --</p> <p>9 A. I don't recall being uncomfortable.</p> <p>10 But, again, we're going back several years. I</p> <p>11 don't -- you know, the practice in an audit is</p> <p>12 to disclose all information to the auditors.</p> <p>13 And I don't -- I don't recall.</p> <p>14 Q. As part of the process of the audit,</p> <p>15 did you sign what is sometimes referred to as a</p> <p>16 management representation letter?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: Can we put up on the</p> <p>19 screen a document that we have premarked as</p> <p>20 Exhibit 33.</p> <p>21 (Exhibit 33 marked.)</p> <p>22 MS. DANDENEAU: Mr. Morris, that is</p> <p>23 not in the binder; correct?</p> <p>24 MR. MORRIS: Correct.</p> <p>25 Q. So you will see, Mr. Waterhouse,</p>
<p>Page 92</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is a letter dated June 3rd. And if we</p> <p>3 could go to the signature page.</p> <p>4 And do you see that you and</p> <p>5 Mr. Dondero signed this document?</p> <p>6 A. Yes.</p> <p>7 Q. That is your signature; right?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Okay. Can you go back</p> <p>10 to the top.</p> <p>11 MS. DANDENEAU: Mr. Morris, can you</p> <p>12 have somebody post this in the chat so that</p> <p>13 we have can have a copy of this, please.</p> <p>14 MR. MORRIS: Yeah, sure. Asia, can</p> <p>15 you do that, please.</p> <p>16 Q. Okay. Do you see at the bottom of</p> <p>17 the second paragraph there is a reference to</p> <p>18 materiality?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. It says, Materiality used for</p> <p>21 purposes of these representations is</p> <p>22 \$1.7 million.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And did PwC set that level of</p>	<p>Page 93</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality?</p> <p>3 A. Yes.</p> <p>4 Q. And for purposes of the audit, did</p> <p>5 PwC set the level of materiality each year?</p> <p>6 A. Yes.</p> <p>7 Q. Did that number change over time?</p> <p>8 A. I'm not aware of what materiality is</p> <p>9 every single year, so -- but, you know, this</p> <p>10 number would likely fluctuate.</p> <p>11 Q. Okay. I'm going to go back to a</p> <p>12 question I asked you earlier today. And that</p> <p>13 is in connection -- this letter is issued in</p> <p>14 connection with the audit for the period ending</p> <p>15 12/31/2018; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it fair to say that if</p> <p>18 any -- actually, withdrawn. I'm going to take</p> <p>19 it outside of this.</p> <p>20 If Highland ever forgave the loan to</p> <p>21 any affiliate or any of its officers or</p> <p>22 employees, in whole or in part, to the best of</p> <p>23 your knowledge, would that forgiveness have</p> <p>24 been disclosed in the audited financial</p> <p>25 statements if it exceeded the level of</p>



<p>Page 94</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality that PwC established?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. So, again, during my tenure as CFO,</p> <p>5 and – Highland – it was – it is required to</p> <p>6 disclose any affiliate loans that are in excess</p> <p>7 of materiality.</p> <p>8 Now, the forgiveness of those loans</p> <p>9 may or may not – I mean, since materiality</p> <p>10 fluctuates every year, a – you know, if a loan</p> <p>11 was forgiven, it may or may not, you know –</p> <p>12 and, look, I would want to consult the guidance</p> <p>13 around this.</p> <p>14 It is not something we do – you</p> <p>15 know, it is not – you know, GAAP can be and</p> <p>16 disclosures can be very specialized so, again,</p> <p>17 we want to consult the guidance. But we would</p> <p>18 see if and what would need to be disclosed if</p> <p>19 it were deemed immaterial.</p> <p>20 Q. Did you and Mr. Dondero sign</p> <p>21 management representation letters of this type</p> <p>22 in each year in which you served as Highland's</p> <p>23 CFO?</p> <p>24 A. I – I – I will speak for myself.</p> <p>25 I signed them. There may have been others that</p>	<p>Page 95</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 signed as well. I don't – I don't recall.</p> <p>3 Q. But to the best of your knowledge,</p> <p>4 you, personally, signed a management</p> <p>5 representation letter in connection with</p> <p>6 Highland's audit each year that you served as</p> <p>7 the CFO; correct?</p> <p>8 A. I would say generally speaking,</p> <p>9 Mr. Morris. I don't recall for every single</p> <p>10 year, you know, generally, but I would want to</p> <p>11 refer to all the rep letters and see who signed</p> <p>12 them.</p> <p>13 Q. Do you recall Highland having its</p> <p>14 financial statements audited in any year during</p> <p>15 the period that you were a CFO where you didn't</p> <p>16 sign the management representation letter?</p> <p>17 A. I don't recall. But, John, we're</p> <p>18 going back five, six, seven, eight, nine,</p> <p>19 decade. I don't – I don't remember.</p> <p>20 Q. I don't want to go back that many</p> <p>21 decades, but I'm just asking you if you recall</p> <p>22 that there was you didn't sign it?</p> <p>23 A. I – I – I don't, but my memory</p> <p>24 is – again, I – I – I can't tell you what I</p> <p>25 did in 2012. I mean, I think generally, yes,</p>
<p>Page 96</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 but I don't – I don't know for sure, and I</p> <p>3 would want to rely on the document.</p> <p>4 Q. Let me ask the question a little bit</p> <p>5 differently then.</p> <p>6 Do you have any reason to believe</p> <p>7 that Highland had its annual financial audit</p> <p>8 and you did not sign a management</p> <p>9 representation letter in connection with that</p> <p>10 audit?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't believe it would, but,</p> <p>13 again, I would want to – I don't recall and I</p> <p>14 would want to confirm it to – to make, you</p> <p>15 know, an affirmative – to give an affirmative</p> <p>16 answer.</p> <p>17 Q. Do you know whether PwC required</p> <p>18 management to sign management representation</p> <p>19 letters?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes. I mean, it – management</p> <p>22 representation letters are signed by</p> <p>23 management.</p> <p>24 Q. Okay. And you know – do you</p> <p>25 have any understanding as to why PwC requires</p>	<p>Page 97</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 management to sign management representation</p> <p>3 letters?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't know why PwC's – what PwC's</p> <p>7 specific practice is. I know generally what</p> <p>8 management representation letters are.</p> <p>9 Q. Okay. Do you personally – I'm not</p> <p>10 asking about PwC. I'm asking for you – I'm</p> <p>11 asking about you, do you have an understanding</p> <p>12 as to why the auditor asks for management</p> <p>13 representation letters?</p> <p>14 A. Okay. So you're asking me in my</p> <p>15 personal capacity, yes, I have a general</p> <p>16 understanding of why.</p> <p>17 Q. Can you give me the general</p> <p>18 understanding that you have as to why</p> <p>19 management representation letters are required?</p> <p>20 A. They are – they are required to –</p> <p>21 they are – they are one of the items required</p> <p>22 in an audit to help verify completeness.</p> <p>23 Q. Do you have any – any other</p> <p>24 understanding as to why management</p> <p>25 representation letters are required?</p>

<p>Page 98</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That is – that is – other than</p> <p>3 what I said, it is – it is – it is required</p> <p>4 so – to ensure that the – you know, there</p> <p>5 is – there is completeness in what is being</p> <p>6 audited.</p> <p>7 Q. Did you – did you have a practice</p> <p>8 whereby you and Mr. Dondero conferred about the</p> <p>9 management representation letters before you</p> <p>10 signed them?</p> <p>11 A. No.</p> <p>12 Q. Did you have a practice –</p> <p>13 withdrawn.</p> <p>14 Do you see just the next sentence</p> <p>15 after the materiality, there is a sentence that</p> <p>16 states: We confirm, to the best of our</p> <p>17 knowledge and belief, as of June 3rd, 2019, the</p> <p>18 date of your report, the following</p> <p>19 representations made to you during your audit.</p> <p>20 Do you see that sentence?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you understand when you</p> <p>23 signed this letter that you were confirming the</p> <p>24 representations that followed?</p> <p>25 A. When I signed this management</p>	<p>Page 99</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 letter – representation letter, yes.</p> <p>3 Q. Okay. Did you discuss this letter</p> <p>4 with Mr. Dondero before you signed it?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall if Mr. Dondero asked</p> <p>7 you any questions before he signed the letter?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall if you asked</p> <p>10 Mr. Dondero any questions before you signed</p> <p>11 this letter?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is it fair to say that Mr. Dondero</p> <p>14 did not disclose to you the existence of the</p> <p>15 agreement that we have – as we've defined that</p> <p>16 term prior to the time you signed this letter?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I don't think I understand the</p> <p>19 question. So, again, you are saying, did</p> <p>20 Mr. Dondero not disclose to me the existence of</p> <p>21 this letter?</p> <p>22 Q. No, I apologize.</p> <p>23 Did Mr. Dondero disclose to you the</p> <p>24 existence of the agreement prior to the time</p> <p>25 you signed this letter on June 3rd, 2019?</p>
<p>Page 100</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The agreement – the agreement that</p> <p>3 we talked about earlier?</p> <p>4 Q. Correct.</p> <p>5 A. Look, as I said earlier, the first</p> <p>6 time I heard of this agreement was sometime</p> <p>7 this year.</p> <p>8 Q. Okay. Can we turn – let's just</p> <p>9 look at a couple of items on the list. If we</p> <p>10 can go to page 33416. Do you see in Number 35</p> <p>11 it talks about the proper recording or</p> <p>12 disclosure in the financial statements of ND</p> <p>13 relationships and transactions with related</p> <p>14 parties.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. As the CFO, do you have any</p> <p>18 understanding as to whether Dugaboy is a</p> <p>19 related party?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know whether any of the</p> <p>22 affiliates are related parties?</p> <p>23 A. If – if it was NexPoint, HCMFA,</p> <p>24 HCMS, HCRE, yeah, if – if that is the</p> <p>25 affiliate definition, and there. In ASC 850 –</p>	<p>Page 101</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 again, I mean, I haven't looked at ASC 850 in</p> <p>3 quite some time, but, you know, if – if there</p> <p>4 is a control language, you know, ASC 850, would</p> <p>5 that – that section in GAAP would – would</p> <p>6 pick up and define what are related parties.</p> <p>7 So, you know, like I said, if – one</p> <p>8 of the four entities I just described, if – if</p> <p>9 they are in that control definition of ASC 850,</p> <p>10 they would be picked up in 35D.</p> <p>11 Q. Do you – do you have any reason to</p> <p>12 believe that they would be picked up in that</p> <p>13 definition, based on your knowledge and</p> <p>14 experience?</p> <p>15 A. I – I believe that entities</p> <p>16 controlled under GAAP are – are affiliates.</p> <p>17 Q. Okay. Would Mr. Dondero also</p> <p>18 qualify as a related party for purposes of</p> <p>19 Section 35D, to the best of your knowledge?</p> <p>20 A. Yeah, I don't – I don't know. I</p> <p>21 would think – I would have to read the code</p> <p>22 section to see if someone personally – is it</p> <p>23 talking about related parties. So, look, if</p> <p>24 your own in control, yeah, I mean, I would have</p> <p>25 to read the section.</p>

<p>Page 102</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. To the best of your knowledge, was</p> <p>3 the existence of the agreement ever disclosed</p> <p>4 to PwC?</p> <p>5 A. I'm not – I'm not aware.</p> <p>6 Q. Do you recall if the agreement was</p> <p>7 ever disclosed in Highland's audited financial</p> <p>8 statements?</p> <p>9 A. I don't – I don't remember if it</p> <p>10 was in every Highland's audited financial</p> <p>11 statements during my tenure. We would have to</p> <p>12 read the financial statements to see what was</p> <p>13 disclosed, but I'm not – I mean, as I sit here</p> <p>14 today, I'm not aware.</p> <p>15 Q. That is all I'm asking for.</p> <p>16 A. I'm not aware.</p> <p>17 Q. Can we go to the next page, please,</p> <p>18 and look at 36. 36 says, we have disclosed to</p> <p>19 you the identity of the partnership's related</p> <p>20 party relationships and all the related party</p> <p>21 relationships and transactions of which we are</p> <p>22 aware.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. To the best of your knowledge, as of</p>	<p>Page 103</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd, 2019, did Highland disclose to PwC</p> <p>3 the identity of the partnership's related</p> <p>4 parties and all the related party relationships</p> <p>5 and transactions of which it was aware?</p> <p>6 A. I mean, I can speak for myself as</p> <p>7 signer of this representation letter. I</p> <p>8 disclosed what – what, you know, what –</p> <p>9 what – what I knew. Sorry, look, yes, so I –</p> <p>10 I disclosed what I knew.</p> <p>11 Q. Okay. Can we go to page 419. Do</p> <p>12 you see at the end there is a reference to</p> <p>13 events that occurred since the end of the</p> <p>14 fiscal year and the date of the letter?</p> <p>15 A. Yes.</p> <p>16 Q. And were you aware of that – of</p> <p>17 that provision of the management representation</p> <p>18 letter before you signed the document?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 why PwC asked for that confirmation of that</p> <p>22 particular part of the management</p> <p>23 representation letter?</p> <p>24 A. It is – it is – it is just – it</p> <p>25 is a typical audit request.</p>
<p>Page 104</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And do you understand – do you have</p> <p>3 an understanding that PwC wanted to know that</p> <p>4 as of the date of the audit whether any</p> <p>5 material changes had occurred since the end of</p> <p>6 the fiscal year, using the definition of</p> <p>7 materiality that is in this particular</p> <p>8 management representation letter?</p> <p>9 A. It – it is – it is – it is a –</p> <p>10 it is as described. It is just a poorly worded</p> <p>11 question, so it is hard for me to say yes.</p> <p>12 Q. If I asked you this, I apologize,</p> <p>13 but did you ever learn when the agreement was</p> <p>14 entered into?</p> <p>15 A. I don't – I don't – like I said</p> <p>16 before, I don't know or have any details of the</p> <p>17 agreement.</p> <p>18 Q. Okay. Did you ever ask anybody when</p> <p>19 the agreement was entered into?</p> <p>20 A. I did not.</p> <p>21 Q. Let's look at the audited financial</p> <p>22 statements. We will put up on the screen a</p> <p>23 document that has been premarked as Exhibit 34.</p> <p>24 (Exhibit 34 marked.)</p> <p>25 MS. DANDENEAU: And again, if Ms. La</p>	<p>Page 105</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Canty could please put that in the chat</p> <p>3 room, that would be great.</p> <p>4 MR. MORRIS: I will assure you we</p> <p>5 will put every document in the chat room.</p> <p>6 Q. Now, I'm just going to ask you</p> <p>7 questions that are related to the provisions of</p> <p>8 this report that concern the affiliate loans,</p> <p>9 but again, Mr. Waterhouse, if there is any part</p> <p>10 of the document that you need to see or that</p> <p>11 you think you might need to see in order to</p> <p>12 refresh your recollection to answer any of my</p> <p>13 questions, will you let me know that?</p> <p>14 A. Yes.</p> <p>15 Q. Because this is a pretty lengthy</p> <p>16 document, but do you see that the cover page</p> <p>17 here is the Highland consolidated financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018?</p> <p>20 A. Yes.</p> <p>21 Q. If we can go to – I think it is the</p> <p>22 next one, looking for PwC's signature line.</p> <p>23 MS. CANTY: I'm sorry, John, did you</p> <p>24 say something?</p> <p>25 MR. MORRIS: Yes, can we turn the</p>

<p>Page 106</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 page. I think it is 215. Yes, stop right</p> <p>3 there, just above – I'm sorry, I want to</p> <p>4 see just the date of the report.</p> <p>5 Q. Okay. Do you see at the bottom of</p> <p>6 that page there, Mr. Waterhouse,</p> <p>7 PricewaterhouseCoopers has signed this audit</p> <p>8 report?</p> <p>9 A. Yes, I see their signature.</p> <p>10 Q. Okay. And it is the dated same day</p> <p>11 as your management representation letter; is</p> <p>12 that right?</p> <p>13 A. It is – yes, it is the same day.</p> <p>14 Q. Was that the practice to sign the</p> <p>15 management representation letter on the same</p> <p>16 day that the audit report was signed?</p> <p>17 A. Yes, that is typical in every audit.</p> <p>18 Q. Can we just scroll down to the</p> <p>19 balance sheet on the next page.</p> <p>20 Do you see that there is a line</p> <p>21 there that says, Notes and Other Amounts Due</p> <p>22 from Affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. Does that line, to the best of your</p> <p>25 knowledge, include the amounts that were due</p>	<p>Page 107</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under the affiliate under the notes signed by</p> <p>3 the affiliates and Mr. Dondero?</p> <p>4 MR. RUKAVINA: Objection to the</p> <p>5 extent that calls for a legal conclusion.</p> <p>6 A. I mean, I would want to see the</p> <p>7 detail and the build to this \$173,398,000, but,</p> <p>8 yes, I mean, if – if – given what we</p> <p>9 discussed before, you know, it – it should</p> <p>10 capture that.</p> <p>11 Q. And – and while you were the CFO of</p> <p>12 Highland, were all notes held by Highland that</p> <p>13 were issued by an affiliate or Mr. Dondero</p> <p>14 carried as assets on Highland's balance sheets?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Object to form.</p> <p>17 A. I don't – I don't know how else</p> <p>18 they would be carried.</p> <p>19 Q. Okay. Can you think of any – are</p> <p>20 you aware of any promissory note issued by an</p> <p>21 affiliate or Mr. Dondero that was not carried</p> <p>22 on Highland's audited financial balance sheets?</p> <p>23 A. I'm – I'm – I'm not aware.</p> <p>24 Q. Okay. Are you aware of any category</p> <p>25 of asset on Highland's balance sheet in which</p>
<p>Page 108</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 any of the promissory notes issued by an</p> <p>3 affiliate or Mr. Dondero would have been</p> <p>4 included?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Sorry, am I aware of any asset of an</p> <p>7 affiliate being included –</p> <p>8 Q. That – let me – let me try again.</p> <p>9 Do you see there is a number of</p> <p>10 different assets that are described on this</p> <p>11 balance sheet?</p> <p>12 A. Yes.</p> <p>13 Q. One of the assets that is described</p> <p>14 is Notes and Other Amounts Due from Affiliates;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And it is reasonable to conclude</p> <p>18 that the notes from the affiliates and</p> <p>19 Mr. Dondero are included in that line item;</p> <p>20 right?</p> <p>21 A. Yes, based on this description.</p> <p>22 Again, I would want to see a build of this to</p> <p>23 100 percent confirm, but based on the</p> <p>24 description, the asset description, it is – it</p> <p>25 is likely.</p>	<p>Page 109</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Now, does that mean absolute? I</p> <p>3 don't know.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that the promissory notes would have been</p> <p>6 carried on the balance sheet in a category</p> <p>7 other than Notes and Other Amounts Due from</p> <p>8 Affiliates?</p> <p>9 A. If they were deemed – no. If they</p> <p>10 were deemed an affiliate, you know, under GAAP,</p> <p>11 they should be carried in that line.</p> <p>12 Otherwise, it would go into another line.</p> <p>13 Q. Okay. And do you see the total</p> <p>14 asset base as of December 31st, 2018, was</p> <p>15 approximately \$1.04 billion?</p> <p>16 A. Yes.</p> <p>17 Q. Is my math correct that the Notes</p> <p>18 and Other Amounts Due from Affiliates</p> <p>19 constituted approximately 17 percent of</p> <p>20 Highland's assets as of the end of 2018?</p> <p>21 A. Well, so how are you defining</p> <p>22 Highland?</p> <p>23 Q. Highland Capital Management, L.P.,</p> <p>24 the entity that this audit is subject to – or</p> <p>25 the subject of.</p>

<p>Page 110</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. On a consolidated or unconsolidated</p> <p>3 basis?</p> <p>4 Q. I'm looking at the balance sheet.</p> <p>5 It is a consolidated balance sheet. Okay?</p> <p>6 Does the Notes and Other Amounts Due</p> <p>7 from Affiliates constitute approximately</p> <p>8 17 percent of the total assets of Highland</p> <p>9 Capital Management, L.P., on a consolidated</p> <p>10 basis?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't have a calculator in front</p> <p>13 of me but I will take your math, if you are</p> <p>14 taking the 173 divided by the billion.</p> <p>15 Q. Okay.</p> <p>16 A. If that is accurate, yes. But,</p> <p>17 again, on a consolidated basis.</p> <p>18 Q. And on an unconsolidated basis the</p> <p>19 percentage would be higher; correct?</p> <p>20 A. I – no. I don't know.</p> <p>21 Q. Well, okay. That is fair.</p> <p>22 MR. MORRIS: Can we turn to</p> <p>23 page 241, please.</p> <p>24 Q. Do you see that this is a section of</p> <p>25 the audit report that is entitled Notes and</p>	<p>Page 111</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Other Amounts Due from Affiliates?</p> <p>3 A. Sorry, I can't see the – the –</p> <p>4 Q. It is at the top.</p> <p>5 A. Notes and Other Amounts Due from</p> <p>6 Affiliates, yes, I see that. I don't – I</p> <p>7 don't have a page number, but I'm on a page</p> <p>8 that says at the top: Notes and Other Amounts</p> <p>9 Due from Affiliates.</p> <p>10 Q. Okay. And that is the same title of</p> <p>11 the line item on the balance sheet that we just</p> <p>12 looked at; right? Notes and Other Amounts Due</p> <p>13 from Affiliates?</p> <p>14 A. Yes.</p> <p>15 Q. And is it your understanding, based</p> <p>16 on your experience and knowledge as the CFO,</p> <p>17 that this is the section of the narrative that</p> <p>18 ties into the line item that we just looked at?</p> <p>19 A. Yes.</p> <p>20 Q. And is this section of the audit</p> <p>21 report intended to describe and disclose all of</p> <p>22 the material facts concerning the Notes and</p> <p>23 Other Amounts Due from Affiliates?</p> <p>24 MS. DANDENEAU: Objection, form.</p> <p>25 A. This – these notes – these notes</p>
<p>Page 112</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the financial statements are – the purpose</p> <p>3 is to disclose any material items in relation</p> <p>4 to that balance sheet line item.</p> <p>5 Q. Okay. And all of the information,</p> <p>6 to the best of your knowledge, that is set</p> <p>7 forth in this section of the audit report was</p> <p>8 provided by Highland; correct?</p> <p>9 A. Yes, it would have been provided by</p> <p>10 the corporate accounting team.</p> <p>11 Q. Okay. And the corporate accounting</p> <p>12 team, did that team report to you in the</p> <p>13 organizational structure?</p> <p>14 A. Yes.</p> <p>15 Q. And did you have any concerns about</p> <p>16 the controls that were in place to make sure</p> <p>17 that the information provided with respect to</p> <p>18 Notes and Other Amounts Due from Affiliates was</p> <p>19 accurate and complete?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay. Do you recall ever being</p> <p>23 concerned that any portion of the Notes and</p> <p>24 Other Amounts Due from Affiliates in any audit</p> <p>25 report was inaccurate, incomplete, or not</p>	<p>Page 113</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reliable?</p> <p>3 A. I didn't – I had concerns about,</p> <p>4 you know, like I talked about before, of there</p> <p>5 were – there were potentially issues in the</p> <p>6 control environment. But as far as it relates</p> <p>7 to the audited financial statements, any – the</p> <p>8 team would work with the auditors to disclose</p> <p>9 all – all notes in Highland's possession.</p> <p>10 And any – any notes that were</p> <p>11 deemed material by the auditor, right, these</p> <p>12 were disclosed in these – in this section, you</p> <p>13 know, in – in the notes to the consolidated</p> <p>14 financial statements as you presented.</p> <p>15 Q. Do you recall ever having a</p> <p>16 conversation with anybody at any time</p> <p>17 concerning the accuracy of the section of audit</p> <p>18 reports that relates to Notes and Other Amounts</p> <p>19 Due from Affiliates?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. You know, as – as – I didn't have</p> <p>22 direct conversations with</p> <p>23 PricewaterhouseCoopers as I had, you know –</p> <p>24 I – I had the team that managed this.</p> <p>25 Again, I wasn't anywhere chose to</p>



<p>Page 114</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 being the point person of this audit. And I</p> <p>3 can't recall, you know, when – you know, I</p> <p>4 don't even know if I was ever the point person</p> <p>5 during my tenure as CFO.</p> <p>6 I don't know if PwC had any concerns</p> <p>7 when they were performing those audit</p> <p>8 procedures. They may have and they may have –</p> <p>9 and it may not have been communicated to me. I</p> <p>10 don't know.</p> <p>11 MR. MORRIS: All right. I move to</p> <p>12 strike.</p> <p>13 Q. And I'm going to ask you to listen</p> <p>14 carefully to my question.</p> <p>15 Did you – do you recall ever having</p> <p>16 a conversation with anybody at any time</p> <p>17 concerning the accuracy of the reporting</p> <p>18 provided in the audited financial statement on</p> <p>19 the topic of Notes and Other Amounts Due?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall for this, but that</p> <p>22 doesn't mean that it didn't exist.</p> <p>23 Q. Okay. But you have no reason to</p> <p>24 believe, as you sit here right now, that you</p> <p>25 ever discussed with anybody concerns over the</p>	<p>Page 115</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 accuracy of the section of the audit reports</p> <p>3 called Notes and Other Amounts Due from</p> <p>4 Affiliates; correct?</p> <p>5 MS. DANDENEAU: Object to the form.</p> <p>6 MS. DEITSCH-PEREZ: Objection to</p> <p>7 form.</p> <p>8 A. I don't recall having any</p> <p>9 conversations. But, again, I mean, this is –</p> <p>10 this is two years ago.</p> <p>11 Q. I'm just asking for your</p> <p>12 recollection, sir.</p> <p>13 A. Yes.</p> <p>14 Q. If you don't recall, this will –</p> <p>15 A. Yeah.</p> <p>16 Q. (Overspeak) – if you don't</p> <p>17 recall –</p> <p>18 A. Yeah, I don't – I don't recall.</p> <p>19 Q. Do you know who was responsible for</p> <p>20 drafting the audit report?</p> <p>21 A. Are you asking the actual Highland</p> <p>22 employee responsible? I mean, it was</p> <p>23 Highland's responsibility, so, I mean, that</p> <p>24 is –</p> <p>25 Q. Right.</p>
<p>Page 116</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. – Highland's responsibility.</p> <p>3 Highland's responsibility.</p> <p>4 Q. Who, at Highland, was responsible</p> <p>5 for drafting this section of the audit report?</p> <p>6 A. I – I don't know the answer to</p> <p>7 that. Again, there was a team who worked on</p> <p>8 this. And I don't know, you know, whether it</p> <p>9 was the staff or the manager.</p> <p>10 Again, this is where I let the teams</p> <p>11 manage. And, you know, there may be a</p> <p>12 corporate accountant who worked on this. I</p> <p>13 just – you know, I wasn't part of that process</p> <p>14 to give that person experience. I don't know.</p> <p>15 Q. Do you recall having any</p> <p>16 communications with anybody at any time</p> <p>17 concerning this section of the report?</p> <p>18 A. Yeah, I don't recall.</p> <p>19 Q. Do you recall whether you ever told</p> <p>20 anybody at any time that any aspect of this</p> <p>21 section of the report was inaccurate or</p> <p>22 incomplete?</p> <p>23 A. I don't recall.</p> <p>24 Q. As you sit here today, do you have</p> <p>25 any reason to believe that this section of the</p>	<p>Page 117</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 audit report is incomplete or inaccurate in any</p> <p>3 way?</p> <p>4 And I'm happy to give you a moment</p> <p>5 to – to look at it, if you would like.</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Same.</p> <p>8 A. I mean, I would have to look at – I</p> <p>9 would have to look at the bill to the note</p> <p>10 schedule to make sure I know you presented me</p> <p>11 with materiality, but again, there might be a</p> <p>12 note as of 12/31/18 that somehow was – was</p> <p>13 under materiality not disclosed. I don't – I</p> <p>14 don't know. I would need more information.</p> <p>15 Q. Okay. But without more information,</p> <p>16 you have no reason to believe anything this</p> <p>17 section is inaccurate; correct?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't. I mean, you know, this was</p> <p>20 part of the audit.</p> <p>21 Q. Thank you. Now, you will see if we</p> <p>22 could scroll just a little bit more that each</p> <p>23 of the first five paragraphs concerns</p> <p>24 specifically the four affiliates that we've</p> <p>25 been discussing and Mr. Dondero.</p>

<p>Page 118</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: If we could go the</p> <p>3 other way, La Asia. We don't need Okada.</p> <p>4 We're going to have to thread the needle.</p> <p>5 Okay. Good, perfect.</p> <p>6 Q. Do you see those five paragraphs</p> <p>7 certain the four affiliates and Mr. Dondero as</p> <p>8 we've been referring to today?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you see at the end of</p> <p>11 every paragraph it states, quote: A fair value</p> <p>12 of a partnership's outstanding notes receivable</p> <p>13 approximates the carrying value of the notes</p> <p>14 receivable?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Do you have an understanding of what</p> <p>17 that means?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding of that</p> <p>20 sentence?</p> <p>21 A. It is the -- again, the -- the fair</p> <p>22 value, right, which is -- which is what the --</p> <p>23 what Highland could sell that asset for. This</p> <p>24 statement is comparing the fair value of the</p> <p>25 notes to the carrying value, so the carrying</p>	<p>Page 119</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 value is the line item that you showed me</p> <p>3 earlier that is in Notes and Other Amounts Due</p> <p>4 from Affiliates.</p> <p>5 Q. Okay. Is another way to say this is</p> <p>6 that the fair market value of the notes equals</p> <p>7 the principal amount and -- withdrawn.</p> <p>8 Is the fair way to interpret this</p> <p>9 that the fair market value of the notes equals</p> <p>10 all remaining unpaid principal and interest due</p> <p>11 under the notes?</p> <p>12 MS. DANDENEAU: Object to the form.</p> <p>13 MS. DEITSCH-PEREZ: Objection, form.</p> <p>14 A. I don't know the answer to that,</p> <p>15 because I don't recall where -- where any --</p> <p>16 where -- in what line item was the interest</p> <p>17 component reported.</p> <p>18 Q. All right. Well, if we look in this</p> <p>19 audit report, you will see in the middle of the</p> <p>20 first paragraph, for example, it states that as</p> <p>21 of December 31st, 2018, total interest and</p> <p>22 principal due on outstanding promissory notes</p> <p>23 was approximately \$5.3 million.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p>Page 120</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that the carrying value or the</p> <p>3 fair value?</p> <p>4 A. That would be the carrying value --</p> <p>5 Q. And is the last --</p> <p>6 A. -- in my opinion.</p> <p>7 Q. Okay. And it is in your opinion as</p> <p>8 the chief financial officer of Highland during</p> <p>9 the period of time that you described; right?</p> <p>10 It is an educated opinion?</p> <p>11 A. I'm reading this at face value. I'm</p> <p>12 taking that as that is carrying value.</p> <p>13 Q. Okay. And does the last sentence</p> <p>14 say that the carrying value is roughly</p> <p>15 approximate to the fair market value?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Again, this note to the financial</p> <p>19 statement is specific to notes and other</p> <p>20 amounts due from affiliates.</p> <p>21 Q. Correct.</p> <p>22 A. If the interest component is</p> <p>23 reported elsewhere on the balance sheet, you</p> <p>24 know, it -- it -- it could be off. Again, I</p> <p>25 don't have the detail. I don't know, but yes,</p>	<p>Page 121</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 look, I mean, if you -- I mean, if you are</p> <p>3 saying the 5.3 million is in the notes and</p> <p>4 other amounts due from affiliates, then the</p> <p>5 last statement is saying the fair value</p> <p>6 approximates 5.3 million. That is what that</p> <p>7 last sentence is saying.</p> <p>8 Q. Do you see in the middle of the</p> <p>9 first paragraph -- not in the middle, the next</p> <p>10 to last sentence there is a statement that the</p> <p>11 partnership will not demand payment on amounts</p> <p>12 that exceed HCMFA's excess cash availability</p> <p>13 prior to May 31st, 2021.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you know when Highland agreed not</p> <p>17 to demand payment as described in that</p> <p>18 sentence?</p> <p>19 A. I don't know specifically.</p> <p>20 Q. Do you know why Highland agreed not</p> <p>21 to demand payment on HCMFA's notes until May</p> <p>22 2021?</p> <p>23 A. Yes.</p> <p>24 Q. Why was that decision made?</p> <p>25 A. You know, well, it -- it -- that</p>

<p>Page 122</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 decision was made as to not put HCMFA into a</p> <p>3 position where it didn't have sufficient assets</p> <p>4 to pay for the demand note.</p> <p>5 Q. And at the time the agreement was</p> <p>6 entered into, pursuant to which the partnership</p> <p>7 wouldn't demand payment, did HCMFA have</p> <p>8 insufficient assets to satisfy the notes if a</p> <p>9 demand had been made?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't have HCMFA's financial</p> <p>12 statements in front of me as of 12/31/18.</p> <p>13 Q. Was there a concern that HCMFA would</p> <p>14 be unable to satisfy its demands under the</p> <p>15 notes if demand was made?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. Well, there is – I don't recall –</p> <p>18 I mean, there is something, right, in place to</p> <p>19 basically not demand payment until May 31, 2021</p> <p>20 as detailed here.</p> <p>21 Q. And who made the decision to enter</p> <p>22 into – who made the decision on behalf of</p> <p>23 Highland not to demand payment until May 31st,</p> <p>24 2021?</p> <p>25 A. I'm trying to remember. I don't</p>	<p>Page 123</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 remember exactly – I don't remember if it was</p> <p>3 myself or – or Jim Dondero who – who – there</p> <p>4 was – there was something signed, from what I</p> <p>5 recall, that – that – that backed up this</p> <p>6 line item in the – in the notes I'm – look,</p> <p>7 I'm, I'm –</p> <p>8 Q. We will get to that.</p> <p>9 A. You –</p> <p>10 Q. I'm just –</p> <p>11 A. You have – I mean –</p> <p>12 Q. We're going to give that to you.</p> <p>13 I'm going to give that to you.</p> <p>14 A. You – you – you have all the</p> <p>15 documents. I don't have the documents, and</p> <p>16 that is what makes it so hard. I don't have</p> <p>17 any documents to prepare for this deposition;</p> <p>18 right? You have all – I don't – I don't – I</p> <p>19 don't remember, but, you know, again, it would</p> <p>20 probably be myself or Jim.</p> <p>21 Q. Do you know if Highland received</p> <p>22 anything in return for its agreement not to</p> <p>23 make a demand for two years?</p> <p>24 A. I don't – I don't think it referred</p> <p>25 anything.</p>
<p>Page 124</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did you and Mr. Dondero discuss</p> <p>3 HCMFA's ability to satisfy the notes if a</p> <p>4 demand was made at the time this agreement was</p> <p>5 entered into?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I don't – I don't – I don't recall</p> <p>8 having a specific conversation, if I did, or –</p> <p>9 or David Klos.</p> <p>10 Q. Okay. I'm just asking if you recall</p> <p>11 any conversations that you had.</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Do you know why Highland</p> <p>14 loaned the money to HCMFA that is the subject</p> <p>15 of the notes described in this paragraph?</p> <p>16 A. I don't remember specifically why</p> <p>17 5.3 million was loaned. I mean, I – it would</p> <p>18 have to be put in the context.</p> <p>19 Q. Do you have any recollection at all</p> <p>20 as to why Highland ever loaned any money to</p> <p>21 HCMFA?</p> <p>22 A. Yes.</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 Q. What do you remember about that?</p> <p>25 A. There was a Highland Global</p>	<p>Page 125</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Allocation Fund, which was a – a fund managed</p> <p>3 by Highland Capital Management Fund Advisors.</p> <p>4 There was a – we – I'm just telling you,</p> <p>5 there was – there was – there was a – a</p> <p>6 ultimately a NAV error found in this fund while</p> <p>7 it was an open-ended fund and, you know, there</p> <p>8 were amounts owed by the advisor in – in</p> <p>9 relation to that NAV error.</p> <p>10 There were also, for the same fund,</p> <p>11 that same fund was ongoing an</p> <p>12 open-end-to-close-end conversion, and as part</p> <p>13 of that proposal, shareholders who voted for</p> <p>14 the conversion received compensation from the</p> <p>15 advisor.</p> <p>16 Q. All right. Now, the events that</p> <p>17 you're describing occurred in the spring of</p> <p>18 2019; right?</p> <p>19 A. These started back – I think, I</p> <p>20 mean –</p> <p>21 Q. I apologize.</p> <p>22 A. – that – I mean, the answer to</p> <p>23 that is no.</p> <p>24 Q. I apologize, the loans that were</p> <p>25 made in connection with the events that you're</p>

<p>Page 126</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 describing occurred in May 2019; right?</p> <p>3 MR. RUKAVINA: Objection to the</p> <p>4 extent that calls for a legal conclusion.</p> <p>5 A. I don't recall specifically what</p> <p>6 amounts of money were moved when, for what</p> <p>7 purpose.</p> <p>8 Q. Okay. Fair enough. Going to the</p> <p>9 next paragraph, do you recall that NexPoint</p> <p>10 Advisors had obtained a number of loans from</p> <p>11 Highland, and they rolled up those loans into</p> <p>12 one note in approximately 2017?</p> <p>13 A. This is for NexPoint Advisors?</p> <p>14 Q. Yes.</p> <p>15 A. I – I mean, I don't – I don't</p> <p>16 recall the NexPoint Advisors loan being a</p> <p>17 roll-up loan, but –</p> <p>18 Q. Do you know why?</p> <p>19 A. But, look, if you have documents</p> <p>20 that show – I mean, look, I just don't recall.</p> <p>21 Q. Okay. That is fair. Do you know</p> <p>22 why – do you have any recollection as to why</p> <p>23 Highland loaned money to NexPoint?</p> <p>24 A. Yes.</p> <p>25 Q. Why did High – why do you recall –</p>	<p>Page 127</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 what is the reason you recall Highland lending</p> <p>3 money to NexPoint?</p> <p>4 A. I mean, I was just – I just – I</p> <p>5 just recall. I mean, I just – I don't</p> <p>6 remember why.</p> <p>7 Q. I understand. And I'm asking you if</p> <p>8 you recall –</p> <p>9 A. Oh, why – I thought you say –</p> <p>10 NexPoint Advisors was launching a fund which</p> <p>11 is – I believe that the legal name is NexPoint</p> <p>12 Capital, Inc. And it – it provided a</p> <p>13 co-invest into that fund.</p> <p>14 And, from what I remember, the –</p> <p>15 the – that NexPoint borrowed money from</p> <p>16 Highland at the time to make that co-invest.</p> <p>17 Q. So this was an investment that</p> <p>18 NexPoint was required to make; is that right?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't know if it was required to</p> <p>21 make, I don't recall that, or if it just made</p> <p>22 it.</p> <p>23 Q. Okay. But your recollection is that</p> <p>24 NexPoint made an investment and they borrowed</p> <p>25 money from Highland to finance the investment.</p>
<p>Page 128</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do I have that right?</p> <p>3 A. Yes.</p> <p>4 Q. How about HCRE? Do you know why</p> <p>5 HCRE borrowed money from Highland?</p> <p>6 A. I don't remember specifically.</p> <p>7 Q. Do you remember generally?</p> <p>8 A. Generally, yeah – I mean, yes.</p> <p>9 Q. Can you tell me your general</p> <p>10 recollection as to why Highland loaned money to</p> <p>11 HCRE?</p> <p>12 A. For – for – for investment</p> <p>13 purposes.</p> <p>14 Q. So HCRE made the investment and it</p> <p>15 obtained a loan, or loans, from Highland in</p> <p>16 order to finance that investment or those</p> <p>17 investments.</p> <p>18 Do I have that right?</p> <p>19 A. I mean, I – you know, generally.</p> <p>20 Q. Okay. How about Highland Management</p> <p>21 Services, Inc.?</p> <p>22 Do you have any recollection as to</p> <p>23 why HCMS borrowed money from Highland?</p> <p>24 A. Generally.</p> <p>25 Q. What is your general recollection as</p>	<p>Page 129</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to why HCMS borrowed money from Highland?</p> <p>3 A. For – for investment purposes.</p> <p>4 Q. So it is the same thing, HCMS wanted</p> <p>5 to make investments and it borrowed money from</p> <p>6 Highland in order to finance those investments;</p> <p>7 is that right?</p> <p>8 A. I mean, yes, generally. I mean, I</p> <p>9 can't – I don't – on the services, there –</p> <p>10 there are several loans in these schedules.</p> <p>11 You know, I can't remember why every single one</p> <p>12 of these were made, but I would say, yeah, I</p> <p>13 mean, generally.</p> <p>14 Q. Okay. I appreciate that.</p> <p>15 MR. MORRIS: Let's go to the page</p> <p>16 with Bates No. 251. La Asia, are you</p> <p>17 there?</p> <p>18 MS. CANTY: Sorry, John. It went</p> <p>19 out for a minute. Can you say that again.</p> <p>20 I don't know what is going on.</p> <p>21 MR. MORRIS: The page with Bates</p> <p>22 No. 251, can we go to that.</p> <p>23 MS. CANTY: Yes, sorry.</p> <p>24 MR. MORRIS: Keep going to the</p> <p>25 bottom. Yeah, there you go.</p>

<p>Page 130</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you see, Mr. Waterhouse, that</p> <p>3 there is a section there called Subsequent</p> <p>4 Events?</p> <p>5 A. I do.</p> <p>6 Q. And does this relate to the last</p> <p>7 sentence above the signature line on the</p> <p>8 management representation letter that we talked</p> <p>9 about earlier where you made the representation</p> <p>10 that you disclosed subsequent events?</p> <p>11 A. I mean, it relates to it, but not in</p> <p>12 its entirety.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: If we can scroll up to</p> <p>15 capture the entirety of this section right</p> <p>16 here.</p> <p>17 Q. And what do you mean by that, sir?</p> <p>18 MR. MORRIS: Yeah, right there.</p> <p>19 Perfect.</p> <p>20 A. There are -- there are different</p> <p>21 subsequent events in -- under GAAP. So there</p> <p>22 are -- and -- and -- so what we see in the</p> <p>23 notes to the financial statements are one type</p> <p>24 of subevent.</p> <p>25 Q. Okay. And -- and would the type of</p>	<p>Page 131</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 subsequent event relating to affiliate loans be</p> <p>3 captured in this section if they were -- if</p> <p>4 they were made after the end of the fiscal year</p> <p>5 and prior to the issuance of the audit report?</p> <p>6 A. Yes, if they were deemed material or</p> <p>7 disclosable.</p> <p>8 Q. Okay. I appreciate that.</p> <p>9 Do you see the next to the last</p> <p>10 entry there? It says, Over the course of 2019</p> <p>11 through the report date, HCMFA issued</p> <p>12 promissory notes to the partnership in the</p> <p>13 aggregate amount of \$7.4 million?</p> <p>14 A. Yes.</p> <p>15 Q. And does that refresh your</p> <p>16 recollection that those are the notes that</p> <p>17 related to the NAV error that you mentioned</p> <p>18 earlier?</p> <p>19 A. I don't -- I don't remember the</p> <p>20 exact. Again, there are -- I mentioned two</p> <p>21 line items; right?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, it was the GAAP conversion</p> <p>24 process plus the -- the NAV error. I don't</p> <p>25 have the details. I don't recall specifically</p>
<p>Page 132</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 if -- you know, what -- if that 7.4 million was</p> <p>3 solely attributable to the NAV error.</p> <p>4 Q. Okay. But there is no question that</p> <p>5 Highland told PricewaterhouseCoopers that over</p> <p>6 the course of 2019 HCMFA issued promissory</p> <p>7 notes to the partnership in the aggregate</p> <p>8 amount of \$7.4 million; correct?</p> <p>9 A. In the course of the audit, we would</p> <p>10 have produced all promissory notes in our</p> <p>11 possession, including the ones that are</p> <p>12 detailed here.</p> <p>13 Q. Do you recall that you signed the</p> <p>14 two promissory notes that are referenced in</p> <p>15 that provision?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. I didn't recall initially but I've</p> <p>18 been reminded.</p> <p>19 Q. Okay. And -- and do you recall that</p> <p>20 those notes are dated May 2nd and May 3rd,</p> <p>21 2019?</p> <p>22 A. Yes.</p> <p>23 Q. So that was just a month before the</p> <p>24 audit was completed; correct?</p> <p>25 A. Yes. I think we had a June 3rd</p>	<p>Page 133</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 date, right, if -- if my memory serves me</p> <p>3 right.</p> <p>4 Q. Yes, I will represent to you that</p> <p>5 your memory is accurate in that regard.</p> <p>6 Did anybody ever instruct you as the</p> <p>7 CFO to correct this statement that we're</p> <p>8 looking at in subsequent events?</p> <p>9 A. So let me understand. You're saying</p> <p>10 when I was CFO at Highland Capital did anyone</p> <p>11 ever ask me to correct the -- over the course</p> <p>12 of 2019 through the report date HCMFA issued</p> <p>13 promissory notes, this statement?</p> <p>14 Q. Right.</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. While you were the CFO of Highland,</p> <p>17 did anybody ever tell you that that sentence</p> <p>18 was wrong?</p> <p>19 A. Not that I'm aware.</p> <p>20 Q. Highland -- withdrawn.</p> <p>21 HCMFA disclosed these notes in its</p> <p>22 own audited financial statements; right?</p> <p>23 MR. RUKAVINA: Objection, form.</p> <p>24 A. I assume that these would be</p> <p>25 material -- if these are material financial</p>



<p>Page 134</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 statements, yes, they – they – they should be</p> <p>3 and they were likely disclosed.</p> <p>4 Q. Now, there is no statement</p> <p>5 concerning the 2019 notes about the forbearance</p> <p>6 that we looked at in the affiliated note</p> <p>7 section of the report; right?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. I'll withdraw. That was bad.</p> <p>10 Do you recall when we were looking</p> <p>11 at the paragraph concerning HCMFA earlier it</p> <p>12 had that disclosure about the agreement whereby</p> <p>13 Highland wouldn't ask for demand on the – on</p> <p>14 the HCMFA notes?</p> <p>15 A. Yes.</p> <p>16 Q. That forbearance disclosure is not</p> <p>17 made with respect to the 2019 notes; right?</p> <p>18 A. Not – look, not that I can recall,</p> <p>19 unless – unless it was done at a subsequent</p> <p>20 day.</p> <p>21 Q. Right. And it is not in the</p> <p>22 subsequent event section that we're looking at</p> <p>23 right now where the 2019 notes are described;</p> <p>24 right?</p> <p>25 A. Right. But this is through</p>	<p>Page 135</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd. It could have been done on June 4th.</p> <p>3 I don't – I don't – I don't recall.</p> <p>4 Q. Okay.</p> <p>5 MR. MORRIS: Can we put up on the</p> <p>6 screen the HCMFA audit report. And while</p> <p>7 we're –</p> <p>8 MS. DANDENEAU: What exhibit is</p> <p>9 this?</p> <p>10 MR. MORRIS: La Asia, what number is</p> <p>11 that?</p> <p>12 MS. CANTY: 45.</p> <p>13 MR. MORRIS: So this will be marked</p> <p>14 as Exhibit 45.</p> <p>15 (Exhibit 45 marked.)</p> <p>16 MS. CANTY: Yeah, and I will put it</p> <p>17 in the chat.</p> <p>18 MS. DANDENEAU: Thank you.</p> <p>19 Q. Okay. All right. Do you see that</p> <p>20 this is the consolidated financial statements</p> <p>21 for HCMFA for the period ending 12/31/18?</p> <p>22 A. Yes.</p> <p>23 Q. As the treasurer of HCMFA at the</p> <p>24 time, did you have to sign a management</p> <p>25 representation letter similar to the one that</p>
<p>Page 136</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we looked at earlier for Highland?</p> <p>3 A. I would imagine I would have been</p> <p>4 asked to. I don't recall if I did.</p> <p>5 Q. Do you recall ever being asked by an</p> <p>6 auditor to sign a management representation</p> <p>7 letter and then not doing it?</p> <p>8 A. No.</p> <p>9 MR. MORRIS: Can we just scroll down</p> <p>10 again. I just want to see the date of the</p> <p>11 document.</p> <p>12 A. I mean, let me – you know, there</p> <p>13 are different versions to management</p> <p>14 representation letters I will qualify.</p> <p>15 Yes, there are certain – from time</p> <p>16 to time auditors can make representations</p> <p>17 that – in the rep letter that is being</p> <p>18 proposed that are inaccurate or out of scope or</p> <p>19 things like that and they've asked for</p> <p>20 signature.</p> <p>21 In that context, yes. I mean, you</p> <p>22 know – I mean, if I have been asked to sign</p> <p>23 and make those representations and those</p> <p>24 representations are invalid, yes, I would not,</p> <p>25 I mean, I – I wouldn't sign that.</p>	<p>Page 137</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. PricewaterhouseCoopers served</p> <p>3 as HCMFA's outside auditors as well; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that this audit report is</p> <p>6 signed on June 3rd, 2019, just like the</p> <p>7 Highland audit report?</p> <p>8 A. That is correct.</p> <p>9 Q. And did the process of – of</p> <p>10 preparing HCMFA's audit report, was that the</p> <p>11 same process that Highland followed when it did</p> <p>12 its audit report at this time?</p> <p>13 A. I mean, it is a different entity.</p> <p>14 There are different assets. You know, it –</p> <p>15 it – it is – as you saw, Highland's</p> <p>16 financials are on a consolidated basis. This</p> <p>17 is different, so it is under the same control</p> <p>18 environment and team.</p> <p>19 Q. Okay. I appreciate that. So the</p> <p>20 same control environment and team participated</p> <p>21 in the preparation of the audit for Highland</p> <p>22 and for HCMFA at around the same time; correct?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we go to page 17 of</p> <p>25 the report. I don't have the Bates number.</p>

<p style="text-align: right;">Page 138</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that just like</p> <p>3 Highland's audited financial report, HCMFA's</p> <p>4 audited financial report also has a section</p> <p>5 related to subsequent events?</p> <p>6 A. Yes.</p> <p>7 Q. And am I reading this correctly that</p> <p>8 just as Highland had done, HCMFA disclosed in</p> <p>9 its audited financial report a subsequent event</p> <p>10 that related to the issuance of promissory</p> <p>11 notes to Highland in the aggregate amount of</p> <p>12 \$7.4 million in 2019?</p> <p>13 A. That is what I see in the report.</p> <p>14 Q. And you were the treasurer of HCMFA</p> <p>15 at the time; right?</p> <p>16 A. Yes, to the best of my knowledge.</p> <p>17 Q. And did anybody ever tell you prior</p> <p>18 to the time of the issuance of this audit</p> <p>19 report that that sentence relating to HCMFA's</p> <p>20 2019 notes was inaccurate or wrong in any way?</p> <p>21 A. Not that I recall.</p> <p>22 Q. As you sit here right now, has</p> <p>23 anybody ever told you that that sentence is</p> <p>24 inaccurate or wrong in any way?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 139</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. I apologize if I asked you this</p> <p>3 already, but has anybody ever told you at any</p> <p>4 time that you are not authorized to sign the</p> <p>5 promissory notes that are the subject of the</p> <p>6 sentence we're looking at?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did anybody ever tell you at any</p> <p>9 time that you had made a mistake when you</p> <p>10 signed the promissory notes that are the</p> <p>11 subject of this sentence?</p> <p>12 A. Say that again. Did anyone ever say</p> <p>13 that I made a mistake?</p> <p>14 Q. Let me ask the question again.</p> <p>15 Did anybody ever tell you at any</p> <p>16 time that you made a mistake when you signed</p> <p>17 the two promissory notes in Highland's favor on</p> <p>18 behalf of HCMFA in 2019?</p> <p>19 A. Not that I recall.</p> <p>20 MR. MORRIS: Let's just look at the</p> <p>21 promissory notes quickly. Can we please</p> <p>22 put up Document Number 1, and so this is in</p> <p>23 the pile that y'all have. We'll just go</p> <p>24 for a few more minutes and we can take our</p> <p>25 lunch break.</p>
<p style="text-align: right;">Page 140</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. All right. So I don't know if you</p> <p>3 have seen this before, sir. Do you see that</p> <p>4 this is a complaint against HCMFA?</p> <p>5 A. Yes, I am looking at it on the</p> <p>6 screen.</p> <p>7 Q. Okay. And have you ever seen this</p> <p>8 document before?</p> <p>9 A. I went through some of these</p> <p>10 documents with my counsel here yesterday.</p> <p>11 MR. MORRIS: All right. Can we go</p> <p>12 to Exhibit 1 of this document.</p> <p>13 Q. Do you see Exhibit 1 is a</p> <p>14 \$2.4 million promissory note back in 2019?</p> <p>15 A. Yeah, I found it in the book. Yes,</p> <p>16 I have it here in front of me.</p> <p>17 Q. And this is a demand note, right, if</p> <p>18 you look at Paragraph 2?</p> <p>19 A. Yes.</p> <p>20 Q. And this is a note where the maker</p> <p>21 is HCMFA, and Highland is the payee; right?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: And if we can scroll</p> <p>24 down, can we just see Mr. Waterhouse's</p> <p>25 signature.</p>	<p style="text-align: right;">Page 141</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that your signature, sir?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And did you sign this document on or</p> <p>5 around May 2nd, 2019?</p> <p>6 A. I don't recall specifically signing</p> <p>7 this, but this is my signature.</p> <p>8 Q. Okay. And do you recall that</p> <p>9 Highland transferred \$2.4 million to HCMFA at</p> <p>10 or around the time you signed this document?</p> <p>11 A. I don't recall specifically. I</p> <p>12 would want to, as I sit here today, go back and</p> <p>13 confirm that, but again, presumably that --</p> <p>14 that -- that did happen.</p> <p>15 Q. You wouldn't have signed this</p> <p>16 document if you didn't believe that HCMFA</p> <p>17 either received or was going to receive</p> <p>18 \$2.4 million from Highland; is that fair?</p> <p>19 A. I mean, it -- if -- if -- if there</p> <p>20 wasn't a transfer of value, yeah, I mean, you</p> <p>21 know, I would have no reason to -- to sign a</p> <p>22 note.</p> <p>23 Q. And -- and Highland wouldn't have</p> <p>24 given this note to PricewaterhouseCoopers if --</p> <p>25 withdrawn.</p>

<p>Page 142</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMFA wouldn't have given this note</p> <p>3 to PricewaterhouseCoopers if it hadn't received</p> <p>4 the principal value of – of the note in the</p> <p>5 form of a loan; correct?</p> <p>6 MR. RUKAVINA: Objection, legal</p> <p>7 conclusion, speculation and form.</p> <p>8 A. Again, we – what we provided to PwC</p> <p>9 were, as part of the audit, any promissory</p> <p>10 notes executed and outstanding. You know, as a</p> <p>11 part of the audit, they, you know, they – they</p> <p>12 have copies of all the bank statements,</p> <p>13 things – things of that sort.</p> <p>14 MR. MORRIS: Okay. Can we go to</p> <p>15 Exhibit 2.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 Q. Do you see that this is a promissory</p> <p>18 note dated May 3rd, 2019 in the amount of</p> <p>19 \$5 million?</p> <p>20 A. Yes.</p> <p>21 Q. Do you believe this is also a demand</p> <p>22 note if you look at Paragraph 2?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that HCMFA is the</p> <p>25 maker, and Highland is the payee?</p>	<p>Page 143</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And if we go to the bottom, can we</p> <p>4 just confirm that that is your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And together these notes are the</p> <p>7 notes that are referred to both in Highland and</p> <p>8 HCMFA's audited financial reports in the</p> <p>9 subsequent event sections; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. They – they – they totaled</p> <p>12 \$7.4 million, so presumably, yes.</p> <p>13 Q. Okay. And you were authorized to</p> <p>14 sign these two notes; correct?</p> <p>15 MR. RUKAVINA: Objection, legal</p> <p>16 conclusion.</p> <p>17 A. Yeah. I mean, I'm – I was the</p> <p>18 officer of – of HCMFA. You know, I – I'm not</p> <p>19 the legal expert on – on what that – what</p> <p>20 that confers to me or what it doesn't. I mean,</p> <p>21 that is my signature on the notes.</p> <p>22 Q. And you believed you were authorized</p> <p>23 to sign the notes; is that fair?</p> <p>24 A. I signed a lot of documents in my</p> <p>25 capacity, just because it is operational in</p>
<p>Page 144</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 nature. So, you know, to me this was just</p> <p>3 another document, to be perfectly honest.</p> <p>4 Q. Sir, would you have signed</p> <p>5 promissory notes with the principal amount of</p> <p>6 \$7.4 million if you didn't believe you were</p> <p>7 authorized to do so?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Are you frozen?</p> <p>10 A. No. I'm just – you know, it is –</p> <p>11 you know, again, I typically don't sign</p> <p>12 promissory notes, and I don't recall why I</p> <p>13 signed these, but – you know, but I did.</p> <p>14 Q. All right. So listen carefully to</p> <p>15 my question. Would you have ever signed</p> <p>16 promissory notes with a face amount of</p> <p>17 \$7.4 million without believing that you were</p> <p>18 authorized to do so?</p> <p>19 A. No. I mean, I'm – I'm putting my</p> <p>20 signature on there, so no.</p> <p>21 Q. Okay. And would you have signed two</p> <p>22 promissory notes obligating HCMFA to pay</p> <p>23 Highland \$7.4 million without Mr. Dondero's</p> <p>24 prior knowledge and approval?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 145</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. You know, from – from what I recall</p> <p>4 around these notes, you know, I don't recall</p> <p>5 specifically Mr. – Mr. Dondero saying to – to</p> <p>6 make this a loan.</p> <p>7 So my conversation with Mr. Dondero</p> <p>8 around the culmination of the NAV error as</p> <p>9 related to TerreStar which was a – a – I</p> <p>10 think it was a year and a half process. I</p> <p>11 don't know, it was a multi-month process, very</p> <p>12 laborious, very difficult.</p> <p>13 When we got to the end, I had a</p> <p>14 conversation with Mr. Dondero on where to, you</p> <p>15 know, basically get the funds to reimburse the</p> <p>16 fund, and I recall him saying, get the money</p> <p>17 from Highland.</p> <p>18 Q. And so he told you to get the money</p> <p>19 from Highland; is that right?</p> <p>20 A. That is what I recall – in my</p> <p>21 conversation with him, that is – that is what</p> <p>22 I can recall.</p> <p>23 Q. Do you know who drafted these notes?</p> <p>24 A. I don't.</p> <p>25 Q. Did you ask somebody to draft the</p>

<p>Page 146</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes?</p> <p>3 A. I didn't ask – I don't specifically</p> <p>4 ask people to draft notes really. I mean,</p> <p>5 again, you know, the legal group at Highland is</p> <p>6 responsible and has always been responsible for</p> <p>7 drafting promissory notes.</p> <p>8 Q. So based on your – based on the</p> <p>9 practice, you believe that somebody from the</p> <p>10 Highland's legal department would have drafted</p> <p>11 these notes. Do I have that right?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. John, I also asked you for the Word</p> <p>14 versions of these notes so we could look at</p> <p>15 the properties, and you have not provided</p> <p>16 them. Are you intending to?</p> <p>17 MR. MORRIS: No.</p> <p>18 Q. Can you answer my question, sir?</p> <p>19 A. Again, I –</p> <p>20 MS. DANDENEAU: Do you want him to</p> <p>21 repeat it?</p> <p>22 A. Yeah, why don't you repeat it?</p> <p>23 Q. Sure. Mr. Waterhouse, based on the</p> <p>24 practice that you have described in your</p> <p>25 understanding, do you believe that these notes</p>	<p>Page 147</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 would have been drafted by somebody in the</p> <p>3 legal department?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you know who would</p> <p>8 have instructed – do you have any knowledge as</p> <p>9 to who would have instructed the legal</p> <p>10 department to draft these notes?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. It was whoever was working – I</p> <p>14 mean, it was likely someone on the team. I</p> <p>15 mean, I don't remember exactly on every note or</p> <p>16 every document, but, again, a lot of these</p> <p>17 things of this nature – they're operational in</p> <p>18 nature – were handled by the team.</p> <p>19 The team knows to – I mean, we</p> <p>20 don't draft documents. We're not lawyers.</p> <p>21 We're not attorneys. It is not what I do or</p> <p>22 accountants do.</p> <p>23 So they are always instructed to go</p> <p>24 and – and go to the legal team to get</p> <p>25 documents like this drafted. Also, when you go</p>
<p>Page 148</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to the legal team, the – you know, we always</p> <p>3 loop in compliance. And compliance – when you</p> <p>4 go to the legal team, compliance is part of</p> <p>5 legal team. They're made aware of – of – of</p> <p>6 these types of transactions.</p> <p>7 Q. And do you believe that you had</p> <p>8 the – withdrawn.</p> <p>9 Did you ever tell Mr. Dondero –</p> <p>10 (inaudible) – did you see those?</p> <p>11 A. Sorry.</p> <p>12 MS. DEITSCH-PEREZ: I did not hear</p> <p>13 the end of that question.</p> <p>14 Q. Did you ever tell Mr. Dondero that</p> <p>15 you signed these two notes?</p> <p>16 A. I don't recall ever – no, I don't</p> <p>17 recall having a conversation with him.</p> <p>18 Q. Did you ever discuss these two notes</p> <p>19 with him at any time?</p> <p>20 A. The conversation, I recall, was what</p> <p>21 I described earlier. And that is the only time</p> <p>22 I recall ever discussing this.</p> <p>23 Q. Okay. But the corporate accounting</p> <p>24 group had a copy of this – of these two notes.</p> <p>25 And pursuant to the audit process, the</p>	<p>Page 149</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 corporate accounting group gave the two notes</p> <p>3 to PricewaterhouseCoopers in connection with</p> <p>4 the audit; correct?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. I mean, that is – yeah, I</p> <p>7 mean, they – unless the legal team can also</p> <p>8 retain copies of items like this. I mean, I</p> <p>9 don't know everything that they would retain as</p> <p>10 well.</p> <p>11 The legal team would also, if they</p> <p>12 had documents as part of audits, turn that over</p> <p>13 to the auditors as well. So it could have been</p> <p>14 the corporate accounting team. It could be</p> <p>15 someone on the legal team.</p> <p>16 Q. All right. So you didn't – you</p> <p>17 didn't draft this note; right?</p> <p>18 A. I – I – I did not.</p> <p>19 Q. But somebody at Highland did; is</p> <p>20 that fair?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I don't know. I mean, we can go to</p> <p>24 the legal team. I don't – I'm not sitting</p> <p>25 behind someone in legal. Maybe they went to</p>

<p>Page 150</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 outside counsel. I have no idea.</p> <p>3 Q. Did you have any reason to believe</p> <p>4 you weren't authorized to sign this note,</p> <p>5 either of these two notes?</p> <p>6 A. I think I have already answered that</p> <p>7 question.</p> <p>8 Q. Okay. You didn't give these notes</p> <p>9 to PricewaterhouseCoopers; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall giving these to</p> <p>12 PricewaterhouseCoopers.</p> <p>13 Q. And in the practice that you have</p> <p>14 described, somebody in the corporate accounting</p> <p>15 group would have given these two notes to</p> <p>16 PricewaterhouseCoopers; correct?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I think I've answered that. I said</p> <p>19 either the corporate accounting team or maybe</p> <p>20 the legal team.</p> <p>21 MR. MORRIS: Okay. Why don't we</p> <p>22 take our lunch break here.</p> <p>23 VIDEOGRAPHER: We're going off the</p> <p>24 record at 1:04 p.m.</p> <p>25 (Recess taken 1:04 p.m. to 1:49 p.m.)</p>	<p>Page 151</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:49 p.m.</p> <p>4 Q. Mr. Waterhouse, did you speak with</p> <p>5 anybody during the break about the substance of</p> <p>6 this deposition?</p> <p>7 A. I spoke to -- to Deb and Michelle.</p> <p>8 Q. About the substance of the</p> <p>9 deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me what you talked</p> <p>12 about?</p> <p>13 MS. DANDENEAU: No. We object on</p> <p>14 the basis of privilege.</p> <p>15 Q. Okay. You are going to follow your</p> <p>16 counsel's objection here?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we put up on the</p> <p>20 screen Exhibit 35.</p> <p>21 (Exhibit 35 marked.)</p> <p>22 Q. Are you able to see that document,</p> <p>23 sir?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen an incumbency</p>
<p>Page 152</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 certificate before?</p> <p>3 A. I have.</p> <p>4 Q. Do you have a general understanding</p> <p>5 of what an incumbency certificate is?</p> <p>6 A. I have a general understanding.</p> <p>7 Q. What is your general understanding?</p> <p>8 A. You know, those -- my general</p> <p>9 understanding is that the incumbency</p> <p>10 certificate basically lists folks that can --</p> <p>11 are like authorized signers.</p> <p>12 Q. Okay. And do you see that this is</p> <p>13 an incumbency certificate for Highland Capital</p> <p>14 Management Fund Advisors, L.P.?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if we could scroll down</p> <p>17 just a little bit, do you see that it's dated</p> <p>18 effective as of April 11th, 2019?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And is that your signature in</p> <p>21 the middle of the signature block?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And by signing it, did you accept</p> <p>24 appointment as the treasurer of HCMFA effective</p> <p>25 as of April 11th, 2019?</p>	<p>Page 153</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I'm not the legal -- I don't</p> <p>3 know if this makes me the treasurer or the</p> <p>4 appointment. I don't know -- I don't know</p> <p>5 that, so I don't -- I don't know if that</p> <p>6 document -- again, I think -- again, I'm not</p> <p>7 the legal expert. I think isn't there --</p> <p>8 aren't there other legal documents that detail</p> <p>9 who the officers are that could be incorporated</p> <p>10 or things like that? Again, I don't want to</p> <p>11 play armchair attorney here.</p> <p>12 Q. I'm not asking you for a legal</p> <p>13 conclusion. I'm asking you for your knowledge</p> <p>14 and understanding. When you signed this</p> <p>15 document, did you understand that you were</p> <p>16 accepting an appointment as the treasurer of</p> <p>17 HCMFA?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, I don't think this -- that</p> <p>21 wasn't my understanding. I don't think this</p> <p>22 makes -- this document makes me the treasurer.</p> <p>23 Q. What do you think this document --</p> <p>24 why did you sign this document?</p> <p>25 MS. DEITSCH-PEREZ: Objection to</p>



<p>Page 154</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MR. MORRIS: You're objecting to the</p> <p>4 form of the question when I asked him why</p> <p>5 did you sign the document? What is the</p> <p>6 basis for the objection?</p> <p>7 MS. DEITSCH-PEREZ: Because, John, I</p> <p>8 think that it does call for a legal</p> <p>9 conclusion other than – with him saying</p> <p>10 because somebody told me to sign this</p> <p>11 document. But if you want to go there,</p> <p>12 that is fine.</p> <p>13 MR. MORRIS: Okay.</p> <p>14 MS. DANDENEAU: I don't think –</p> <p>15 he's already said he's not a lawyer.</p> <p>16 MR. MORRIS: I'll allow the witness</p> <p>17 to answer this question.</p> <p>18 Q. Why did you sign this document, sir?</p> <p>19 A. I mean, our – our legal group would</p> <p>20 bring by these incumbency certificates from</p> <p>21 time to time. I have no idea why they're being</p> <p>22 updated, and I was asked to sign.</p> <p>23 Q. Did you ask anybody, what is this</p> <p>24 document?</p> <p>25 A. No.</p>	<p>Page 155</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anybody tell you why they needed</p> <p>3 you to sign the document?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. You testified earlier that you</p> <p>6 understood that you served as the acting</p> <p>7 treasurer for HCMFA; correct?</p> <p>8 A. Yes.</p> <p>9 Q. How did you become the acting</p> <p>10 treasurer of HCMFA?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't – I don't know the legal –</p> <p>13 I don't know the legal mechanic of how I became</p> <p>14 the acting treasurer.</p> <p>15 Q. I'm not asking for the legal</p> <p>16 mechanic. I'm asking you as the person who</p> <p>17 is –</p> <p>18 MS. DANDENEAU: John, you said –</p> <p>19 MR. MORRIS: Stop.</p> <p>20 MS. DANDENEAU: – how did you</p> <p>21 become the treasurer. That is –</p> <p>22 MR. MORRIS: Please stop.</p> <p>23 MS. DANDENEAU: That is a legal</p> <p>24 question.</p> <p>25 MR. MORRIS: I am not asking any</p>
<p>Page 156</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 legal questions, to be clear. I'm asking</p> <p>3 for this witness' understanding as to how</p> <p>4 he became the acting treasurer of HCMFA.</p> <p>5 If he doesn't know, he can say he doesn't</p> <p>6 know, but this legal stuff is nonsense, and</p> <p>7 I really object to it.</p> <p>8 Q. Sir, I'm asking you a very simple</p> <p>9 question.</p> <p>10 MS. DANDENEAU: Argumentative.</p> <p>11 Q. You testified – you testified that</p> <p>12 you became the acting treasurer of HCM –</p> <p>13 HCMFA; correct?</p> <p>14 A. Yes.</p> <p>15 Q. How did that happen?</p> <p>16 MS. DANDENEAU: Again, object to</p> <p>17 form.</p> <p>18 MR. MORRIS: I can't wait to do this</p> <p>19 in a courtroom. Good God.</p> <p>20 Q. Go ahead, sir.</p> <p>21 A. I don't know the exact process of</p> <p>22 how that happened.</p> <p>23 Q. Do you have any idea whether signing</p> <p>24 this document was part of the process?</p> <p>25 MR. MORRIS: You know what –</p>	<p>Page 157</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection.</p> <p>3 MR. MORRIS: – withdrawn. You guys</p> <p>4 want to do this, I can't wait. I can't</p> <p>5 wait. This is the craziest stuff ever.</p> <p>6 MS. DANDENEAU: John, he said he's</p> <p>7 not a lawyer, and you are asking him for a</p> <p>8 legal conclusion, and he says he doesn't</p> <p>9 know, and you persist.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 MS. DANDENEAU: So you can ask these</p> <p>12 questions –</p> <p>13 MR. MORRIS: Did anyone – please</p> <p>14 stop talking.</p> <p>15 MS. DANDENEAU: – at another</p> <p>16 point – no, no, no, I'm entitled to talk,</p> <p>17 too; right? If you're going to make these</p> <p>18 accusations as if we're trying to stonewall</p> <p>19 you, this is not the witness to ask that</p> <p>20 question.</p> <p>21 MR. MORRIS: I can't – I can't</p> <p>22 wait – I can't wait to do this in a</p> <p>23 courtroom. I will just leave it at that.</p> <p>24 MS. DANDENEAU: That's right, I'm</p> <p>25 sure you can't.</p>

<p>Page 158</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anyone ever tell you, sir, that</p> <p>3 even though you were the acting treasurer of</p> <p>4 HCMFA, that you were not authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. I'm not sure I understand the</p> <p>8 question. I wasn't – I mean, I'm – I'm the</p> <p>9 current acting treasurer.</p> <p>10 Q. Did anybody ever tell you at any</p> <p>11 time that even though you were the acting</p> <p>12 treasurer of HCMFA, that you were not</p> <p>13 authorized to sign the two promissory notes</p> <p>14 that we looked at before lunch?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did anybody ever tell you at any</p> <p>18 time that you were not authorized to sign the</p> <p>19 two promissory notes that we looked at before</p> <p>20 lunch?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did anybody ever tell you at any</p> <p>23 time that you should not have signed the two</p> <p>24 promissory notes that we looked at before</p> <p>25 lunch?</p>	<p>Page 159</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you ever tell anybody at any</p> <p>4 time that you weren't authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you ever tell anybody at any</p> <p>9 time that you made a mistake when you signed</p> <p>10 the two promissory notes that we looked at</p> <p>11 before lunch?</p> <p>12 A. Not that I recall.</p> <p>13 Q. As you sit here right now, do you</p> <p>14 have any reason to believe that you were not</p> <p>15 authorized to sign the two documents that we</p> <p>16 looked at before lunch?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. If – if this is the – the valid</p> <p>19 incumbency certificate, I mean, this does –</p> <p>20 this does detail who the signers are.</p> <p>21 Q. Okay. And looking at that document,</p> <p>22 does that give you comfort that you were</p> <p>23 authorized to sign the two promissory notes</p> <p>24 that we looked at before lunch?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 160</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MS. DANDENEAU: Objection, form.</p> <p>4 A. Yes.</p> <p>5 Q. As of October 20th – withdrawn.</p> <p>6 I'm trying to take your mind back to</p> <p>7 a year ago, October 2020. Do you recall at</p> <p>8 that time that the boards of the retail funds</p> <p>9 were making inquiries about obligations that</p> <p>10 were owed by the advisors to Highland in</p> <p>11 connection with their 15(c) review?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I don't – I don't recall.</p> <p>14 Q. As of October 2020, you had no</p> <p>15 reason to believe you weren't authorized to</p> <p>16 sign the two promissory notes that we just</p> <p>17 looked at; correct?</p> <p>18 MS. DANDENEAU: Objection, form.</p> <p>19 MS. DEITSCH-PEREZ: Objection to</p> <p>20 form.</p> <p>21 A. I didn't think about it in October</p> <p>22 of 2020, but I mean –</p> <p>23 Q. Did you have any reason to believe</p> <p>24 at that time that you weren't authorized to</p> <p>25 sign the two notes that we just looked at?</p>	<p>Page 161</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I'm aware, no.</p> <p>3 Q. Did you have any reason to believe a</p> <p>4 year ago that you made a mistake when you</p> <p>5 signed those two notes?</p> <p>6 A. Not that I'm aware.</p> <p>7 Q. A year ago you believed that HCMFA</p> <p>8 owed Highland the unpaid principal amounts that</p> <p>9 were due under those two notes; correct?</p> <p>10 A. They're – they're promissory notes</p> <p>11 that were – as you presented, that were –</p> <p>12 that were executed. Whether they're valid or</p> <p>13 if there's other reasons, I didn't – I don't</p> <p>14 know.</p> <p>15 Q. I'm not asking you whether they're</p> <p>16 valid or not. I'm asking you for your state of</p> <p>17 mind. A year ago you believed that HCMFA</p> <p>18 was – was obligated to pay the unpaid</p> <p>19 principal amount under the two notes that you</p> <p>20 signed; correct?</p> <p>21 A. Yeah, I'm – I'm – yes.</p> <p>22 Q. Thank you. Are you aware – you're</p> <p>23 aware that – that in 2017, NexPoint issued a</p> <p>24 note in favor of Highland in the approximate</p> <p>25 amount of \$30 million; correct?</p>

<p>Page 162</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I'm – I'm – I'm generally aware.</p> <p>3 Q. Okay. And are you generally aware</p> <p>4 that from time to time, after the note was</p> <p>5 issued by NexPoint, that moneys were applied to</p> <p>6 principal and interest that were due under the</p> <p>7 NexPoint note?</p> <p>8 A. Yes, I'm generally aware.</p> <p>9 Q. Okay. And did anybody ever tell you</p> <p>10 that the payments that were made against the</p> <p>11 NexPoint notes were made by mistake?</p> <p>12 A. Yes.</p> <p>13 Q. And is it the one payment that we</p> <p>14 talked about earlier today?</p> <p>15 A. We talked about a lot of things</p> <p>16 today. What payment are we talking about?</p> <p>17 Q. Okay. Who told you that any payment</p> <p>18 made against the NexPoint note was made by</p> <p>19 mistake?</p> <p>20 A. D.C. Sauter.</p> <p>21 Q. When did Mr. Sauter tell you that?</p> <p>22 A. I don't – I don't remember</p> <p>23 specifically.</p> <p>24 Q. Do you remember what payments –</p> <p>25 A. Sometime – sometime this year.</p>	<p>Page 163</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Sometime in 2021?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember what payment he was</p> <p>5 referring to?</p> <p>6 A. It was the – the payment made in</p> <p>7 January of 2021 or – yeah, January of – of</p> <p>8 this – January of 2021.</p> <p>9 Q. Okay. So did anybody ever tell you</p> <p>10 at any time that any payment that was made</p> <p>11 against principal –</p> <p>12 A. And – and – and – hold on, and it</p> <p>13 may have been other – again, it may have been</p> <p>14 that payment or – or there may have been what</p> <p>15 he was explaining, a misapplication of prior</p> <p>16 payments as well.</p> <p>17 Q. Can you – can you give me any</p> <p>18 specificity – withdrawn.</p> <p>19 Withdrawn. Can you tell me</p> <p>20 everything that Mr. Sauter told you about –</p> <p>21 about errors in relation to payments made</p> <p>22 against principal and interest due under the</p> <p>23 NexPoint note?</p> <p>24 MS. DANDENEAU: Can I just –</p> <p>25 MR. RUKAVINA: Hold on. Hold on.</p>
<p>Page 164</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I'm going to object here, and I'm going to</p> <p>3 instruct the witness not to answer</p> <p>4 depending on the discussion that you had –</p> <p>5 Mr. Waterhouse, I'm the lawyer for</p> <p>6 NexPoint, and as everyone here knows, D.C.</p> <p>7 Sauter is in-house counsel.</p> <p>8 So if you and Mr. Sauter were having</p> <p>9 a factual discussion and him preparing his</p> <p>10 affidavit, et cetera, then go ahead and</p> <p>11 answer that. But if you were having a</p> <p>12 discussion as to our legal strategy in this</p> <p>13 lawsuit, or anything having to do with</p> <p>14 that, then do not answer that.</p> <p>15 And if you need to talk to either</p> <p>16 your counsel or me about that, then we need</p> <p>17 to have that discussion now.</p> <p>18 A. Okay. Yeah, I don't – I don't</p> <p>19 really know how to make that distinction, so</p> <p>20 maybe I need to talk to counsel before I</p> <p>21 answer, or if I can answer.</p> <p>22 Q. Let me just ask you this question:</p> <p>23 Did – did you have any conversation with</p> <p>24 Mr. Sauter about any payment of principal and</p> <p>25 interest prior to the time that you left</p>	<p>Page 165</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland's employment, or did it happen after</p> <p>3 you left Highland's employment?</p> <p>4 A. I don't – I don't recall if – I</p> <p>5 don't recall. I mean, it was sometime in 2021.</p> <p>6 I don't remember if it was before or after I</p> <p>7 was let go from Highland.</p> <p>8 Q. Okay. So – so nobody told you</p> <p>9 prior to 2021 that any error or mistake was</p> <p>10 made in the application of payments against</p> <p>11 principal and interest due on the NexPoint</p> <p>12 note. Do I have that right?</p> <p>13 A. Yeah, I don't – I don't recall this</p> <p>14 being in 2020.</p> <p>15 Q. Okay. And it didn't happen in 2019;</p> <p>16 correct?</p> <p>17 A. I don't recall that happened.</p> <p>18 Q. And it didn't happen in 2018;</p> <p>19 correct?</p> <p>20 A. I don't – I don't recall that</p> <p>21 happening.</p> <p>22 Q. And it didn't happen in 2017;</p> <p>23 correct?</p> <p>24 A. I don't recall.</p> <p>25 Q. But – but you believe the</p>

<p>Page 166</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conversation took place in 2021. You just</p> <p>3 don't remember if it was before or after you</p> <p>4 left Highland's employment. Do I have that</p> <p>5 right?</p> <p>6 A. It was sometime this year. I</p> <p>7 don't – I don't remember.</p> <p>8 Q. Okay. Did you report this</p> <p>9 conversation to Mr. Seery at any point?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you report this conversation to</p> <p>12 anybody at DSI at any time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you have – you don't have a</p> <p>15 recollection of ever doing that; correct?</p> <p>16 A. Yeah, that's right. I don't recall</p> <p>17 doing that.</p> <p>18 Q. Do you recall telling anybody at</p> <p>19 Pachulski Stang about the conversation you</p> <p>20 recall with Mr. Sauter?</p> <p>21 A. No, I don't – I don't recall.</p> <p>22 Q. Did you tell any of the independent</p> <p>23 board members about your conversation with</p> <p>24 Mr. Sauter?</p> <p>25 A. I don't recall.</p>	<p>Page 167</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you tell any of the employees at</p> <p>3 Highland before you left Highland's employment</p> <p>4 about this call that you had with Mr. Sauter?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. No, I don't – no, I don't recall.</p> <p>7 Q. NexPoint – to the best of your</p> <p>8 knowledge, did NexPoint ever file a proof of</p> <p>9 claim against Highland to try to recover moneys</p> <p>10 that were mistakenly paid against the principal</p> <p>11 and interest due under the note?</p> <p>12 A. Okay. Hold on. You are saying did</p> <p>13 NexPoint Advisors file a proof of claim to</p> <p>14 Highland for errors related to payments under</p> <p>15 the NexPoint note to Highland?</p> <p>16 Q. Correct.</p> <p>17 A. I'm – I'm – I'm not – I'm not</p> <p>18 aware.</p> <p>19 Q. Are you aware –</p> <p>20 A. I'm not the legal person here, I</p> <p>21 don't know.</p> <p>22 Q. I'm just asking for your knowledge,</p> <p>23 sir.</p> <p>24 A. Yeah, I don't know. I'm not aware.</p> <p>25 Q. Are you aware of any claim of any</p>
<p>Page 168</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 kind that NexPoint has ever made to try to</p> <p>3 recover the amounts that it contends were – or</p> <p>4 that Mr. Sauter contend were mistakenly applied</p> <p>5 against principal and interest due under the</p> <p>6 NexPoint note?</p> <p>7 A. I'm not aware.</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Okay. The advisors' agreements with</p> <p>10 the retail funds are subject to annual renewal;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you participate in the</p> <p>14 renewal process each year?</p> <p>15 A. Yes.</p> <p>16 Q. What role do you play in the renewal</p> <p>17 process?</p> <p>18 A. I'm – I'm asked by the retail board</p> <p>19 to walk-through the advisors financials.</p> <p>20 Q. And do you do that in the context of</p> <p>21 a board meeting?</p> <p>22 A. Yes, it is – yes, it is typically</p> <p>23 done in a board meeting.</p> <p>24 Q. And do you recall the time –</p> <p>25 does – does the renewal process happen around</p>	<p>Page 169</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the same time each year?</p> <p>3 A. Yes, it is – it is around the same</p> <p>4 time every year.</p> <p>5 Q. And what – what time period of the</p> <p>6 year does the renewal process occur?</p> <p>7 A. Approximately the September</p> <p>8 timeframe.</p> <p>9 Q. During that process, in your</p> <p>10 experience, does the board typically conduct</p> <p>11 its own diligence and ask for information?</p> <p>12 A. Does the board ask for lots of – I</p> <p>13 mean, just – I mean, lots of information as a</p> <p>14 part of that – that – as part of that board</p> <p>15 meeting and that process.</p> <p>16 Q. Okay. And do you recall that the</p> <p>17 process in 2020 spilled into October?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Okay. And as part of the process in</p> <p>20 2020, the retail board asked – asked what are</p> <p>21 referred to as 15(c) questions; right?</p> <p>22 A. I guess I don't want to be – they</p> <p>23 asked 15(c) – are you saying they asked 15(c)</p> <p>24 questions and this is why it went into October</p> <p>25 or –</p>

<p>Page 170</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. No, I apologize.</p> <p>3 Do you have an understanding of</p> <p>4 what – of what 15(c) refers to in the context</p> <p>5 of the annual renewal process?</p> <p>6 A. Yes, generally.</p> <p>7 Q. All right. What is your general</p> <p>8 understanding of the term "15(c)" in the</p> <p>9 context of the annual renewal process?</p> <p>10 A. I – I think 15(c) is the section</p> <p>11 that – that – you know, that – that the</p> <p>12 board has to evaluate every year, the retail</p> <p>13 board. They have to, you know, go through,</p> <p>14 evaluate, and go through that approval process</p> <p>15 on a yearly basis.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up on the</p> <p>18 screen Exhibit 36, please.</p> <p>19 (Exhibit 36 marked.)</p> <p>20 MR. MORRIS: I guess let's just</p> <p>21 start at the bottom so Mr. Waterhouse can</p> <p>22 see what is here.</p> <p>23 Q. You see this begins with an email</p> <p>24 from Blank Rome to a number of people.</p> <p>25 MR. MORRIS: And if we can scroll</p>	<p>Page 171</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 up – keep going just a little bit.</p> <p>3 Q. You will see that there is an email</p> <p>4 from Lauren Thedford to Thomas Surgent and</p> <p>5 others where she reports that she was attaching</p> <p>6 and reproducing below additional 15(c)</p> <p>7 follow-up questions from the board.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see Question No. 2 asks</p> <p>11 whether there are any material outstanding</p> <p>12 amounts currently payable or due in the future</p> <p>13 (e.g., notes) to HCMLP by HCMFA or NexPoint</p> <p>14 Advisors or any other affiliate that provides</p> <p>15 services to the funds?</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And – and did you – do you recall</p> <p>19 that in – in October of 2020 the retail boards</p> <p>20 were asking for that information?</p> <p>21 A. I don't recall it, but there –</p> <p>22 they're obviously asking in this email.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Can we scroll up a</p> <p>25 little bit, please.</p>
<p>Page 172</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then do you see that</p> <p>3 Ms. Thedford includes you on the email string</p> <p>4 on Tuesday, October 6th, at 5:52?</p> <p>5 A. Yes.</p> <p>6 Q. And she asks you and Dave Klos and</p> <p>7 Kristin Hendrix for advice on that particular</p> <p>8 Request No. 2 that I have just read; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you tell me who</p> <p>11 Ms. Thedford is?</p> <p>12 A. She was an attorney that was in the</p> <p>13 legal group.</p> <p>14 Q. At Highland Capital Management,</p> <p>15 L.P.?</p> <p>16 A. I'm – I'm – I'm – I don't</p> <p>17 remember if she was an employee of Highland or</p> <p>18 any of the advisors.</p> <p>19 Q. Okay. Do you know if she served as</p> <p>20 the corporate secretary for both HCMFA and</p> <p>21 NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And – okay.</p> <p>24 Do you know whether Ms. Thedford</p> <p>25 held any positions in relation to the retail</p>	<p>Page 173</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 funds as we defined that term?</p> <p>3 A. Yes.</p> <p>4 Q. What is your understanding of the</p> <p>5 positions that Ms. Thedford held at the retail</p> <p>6 funds?</p> <p>7 A. I – I recall her being an officer.</p> <p>8 I don't recall her title.</p> <p>9 Q. Okay. Is she still an officer at</p> <p>10 any of the retail funds today?</p> <p>11 A. No.</p> <p>12 Q. Do you know when she ceased to be an</p> <p>13 officer of the retail funds?</p> <p>14 A. Approximately.</p> <p>15 Q. And when did she approximately cease</p> <p>16 to be an officer of the retail funds?</p> <p>17 A. It was in – it was in early of</p> <p>18 2021.</p> <p>19 Q. Okay. Do you know when she became</p> <p>20 an officer of the retail funds?</p> <p>21 A. I don't recall.</p> <p>22 Q. To the best of your recollection,</p> <p>23 was she an officer of the retail funds in</p> <p>24 October of 2020?</p> <p>25 A. I believe so.</p>



<p>Page 174</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know what title she</p> <p>3 held in her capacity as an officer, if any?</p> <p>4 A. I told you I don't remember.</p> <p>5 Q. Okay. So she sends this email to</p> <p>6 you at 5:52 p.m. on October 6th.</p> <p>7 And if we can scroll up to the</p> <p>8 response, you responded a minute later with a</p> <p>9 one-word answer. Yes.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And – and yes is – yes was in</p> <p>13 response to the retail board's Question No. 2,</p> <p>14 right, whether there are any material</p> <p>15 outstanding amounts currently payable or due in</p> <p>16 the future?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: And can we scroll up to</p> <p>19 see what happened next.</p> <p>20 Q. So Ms. Thedford writes back to you a</p> <p>21 few minutes later and she asks whether you</p> <p>22 could provide the amounts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then you respond further and you</p>	<p>Page 175</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 refer her to the balance sheet that was</p> <p>3 provided to the board as part of the 15(c)</p> <p>4 materials.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And – and did the advisors provide</p> <p>8 to the board certain balance sheets in 2020 in</p> <p>9 connection with the 15(c) review?</p> <p>10 A. Yes, they did.</p> <p>11 Q. Okay. And were the amounts that</p> <p>12 were outstanding or that were to be due in the</p> <p>13 future by the advisors to Highland included in</p> <p>14 the liability section of the balance sheet that</p> <p>15 was given to the retail board?</p> <p>16 A. Yes. Notes would be reflected as</p> <p>17 liabilities.</p> <p>18 Q. Okay. And –</p> <p>19 A. If I'm understanding your question</p> <p>20 correctly.</p> <p>21 Q. You are. And – and – and those</p> <p>22 liabilities you – you were – you believed</p> <p>23 were responsive to the retail board's question;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p>Page 176</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And then if we can scroll up,</p> <p>3 you see Ms. Thedford responds to you</p> <p>4 nine minutes later with a draft response.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And she says that she is taking from</p> <p>8 the 6/30 financials certain information about</p> <p>9 amounts that were due to HCMLP and affiliates</p> <p>10 as of June 30th, 2020.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And did you believe, as the</p> <p>14 treasurer of NexPoint and HCMFA and as the CFO</p> <p>15 of Highland, that the information that</p> <p>16 Ms. Thedford obtained from the 6/30 financials</p> <p>17 was accurate and responsive in relation to the</p> <p>18 retail fund board's question?</p> <p>19 A. I just want to make sure I</p> <p>20 understand the question.</p> <p>21 Are you saying that the financial</p> <p>22 information provided to the retail board as</p> <p>23 part of the 15(c) process, which included</p> <p>24 financial statements as of June 30th of 2021,</p> <p>25 did I feel like those were responsive to their</p>	<p>Page 177</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 questions?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Thank you.</p> <p>6 MS. DEITSCH-PEREZ: John, it is not</p> <p>7 in the chat yet. Can you just make sure it</p> <p>8 gets put in there.</p> <p>9 MR. MORRIS: Sure.</p> <p>10 MS. CANTY: I put it in there. I</p> <p>11 think maybe I just sent it directly, so let</p> <p>12 me make sure it says to everyone. But I</p> <p>13 did put it in there. I will try again.</p> <p>14 MR. MORRIS: Thank you, La Asia.</p> <p>15 MS. DANDENEAU: What number is it.</p> <p>16 MR. MORRIS: What, the Bates number?</p> <p>17 MS. DEITSCH-PEREZ: No, the –</p> <p>18 this – yeah, 36 is not in the chat.</p> <p>19 MR. MORRIS: Okay. We'll get it.</p> <p>20 MS. DANDENEAU: I think that</p> <p>21 Ms. Canty just sent it to me originally.</p> <p>22 Sorry.</p> <p>23 MR. MORRIS: Okay. We will get it</p> <p>24 there.</p> <p>25 MS. CANTY: Okay. It is there now</p>

<p>Page 178</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for everyone.</p> <p>3 MS. DEITSCH-PEREZ: Got it. Thank</p> <p>4 you.</p> <p>5 Q. Do you recall if the proposed</p> <p>6 response that Ms. Thedford crafted was</p> <p>7 delivered to the retail board with the – with</p> <p>8 the yellow dates having been completed?</p> <p>9 A. I don't know.</p> <p>10 MR. MORRIS: Davor, I'm going to ask</p> <p>11 that the advisors and – the advisors of</p> <p>12 both HCMFA and NexPoint produce to me any</p> <p>13 report that was given to the retail board</p> <p>14 concerning the promissory notes at issue,</p> <p>15 including the obligations under the notes.</p> <p>16 Q. Do you know – do you know if</p> <p>17 ultimately NexPoint informed the retail board</p> <p>18 in response to its question that NexPoint owed</p> <p>19 Highland approximately 23 or \$24 million?</p> <p>20 MS. DANDENEAU: Objection to the</p> <p>21 form.</p> <p>22 A. Sorry, are you asking, did NexPoint</p> <p>23 tell the retail board that it owed Highland?</p> <p>24 Q. Let me ask a better question,</p> <p>25 Mr. Waterhouse.</p>	<p>Page 179</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Did – do you know if anybody ever</p> <p>3 answered the retail board's question that was</p> <p>4 Number 2?</p> <p>5 A. I don't – I can't say for sure.</p> <p>6 Q. Okay. Do you recall – I think you</p> <p>7 testified earlier that you walked through the</p> <p>8 advisors' financials with the retail board;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And as part of that process, did you</p> <p>12 disclose to the retail board the obligations</p> <p>13 that NexPoint and HCMFA had to Highland under</p> <p>14 promissory notes?</p> <p>15 A. The retail board, as I stated</p> <p>16 earlier, receives financial information,</p> <p>17 balance sheet, income statement information</p> <p>18 from the advisors. That information is</p> <p>19 provided to the retail board in connection with</p> <p>20 the 15(c) process.</p> <p>21 So any notes between the advisors</p> <p>22 and the Highland would be – anything would be</p> <p>23 detailed in those financial statements.</p> <p>24 Q. Do you recall in 2020 ever speaking</p> <p>25 with the retail board about the advisors'</p>
<p>Page 180</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 obligations under the notes to Highland?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall specifically.</p> <p>7 Q. Do you have any general recollection</p> <p>8 of discussing with the retail board the</p> <p>9 advisors' obligations to Highland under the</p> <p>10 notes that they issued?</p> <p>11 MS. DANDENEAU: Object to the form.</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I just recall generally just – it</p> <p>15 is just – I present the financial statements,</p> <p>16 and if they have questions, I answer their</p> <p>17 questions and walk them through.</p> <p>18 I don't recall what they asked. I</p> <p>19 don't recall where the discussion went. I</p> <p>20 don't recall anything of that nature.</p> <p>21 Q. Okay. Do you know if anybody on</p> <p>22 behalf of HCMF – HCMFA ever told the retail</p> <p>23 board that HCMFA had no obligations under the</p> <p>24 two 2019 notes that you signed? Withdrawn.</p> <p>25 Do you know whether anybody on</p>	<p>Page 181</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 behalf of HCMFA ever told the retail boards</p> <p>3 that you weren't authorized to sign either of</p> <p>4 the two 2019 notes?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. I'm not aware.</p> <p>7 Q. Are you aware of anybody on behalf</p> <p>8 of HCMFA ever telling the retail boards that</p> <p>9 your execution of the two 2019 notes was a</p> <p>10 mistake?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I'm not aware.</p> <p>13 Q. Are you aware of anybody on behalf</p> <p>14 of HCMFA ever telling the retail boards that</p> <p>15 HCMFA did not have to pay the amounts reflected</p> <p>16 in the two notes that you signed in 2019?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Do you know whether anybody ever</p> <p>19 told the retail boards – withdrawn.</p> <p>20 Do you know whether anybody ever</p> <p>21 told the retail boards that Highland has</p> <p>22 commenced a lawsuit to recover on the two notes</p> <p>23 that you signed in 2019?</p> <p>24 A. I'm not aware.</p> <p>25 Q. Are you aware of anybody informing</p>

<p>Page 182</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the retail boards that Highland has sued to</p> <p>3 recover on the NexPoint note?</p> <p>4 A. I'm not aware.</p> <p>5 Q. Do you know whether anybody ever</p> <p>6 told the retail board that Highland had</p> <p>7 declared a default with respect to the two</p> <p>8 HCMFA notes that you signed in 2019?</p> <p>9 A. I'm not aware.</p> <p>10 Q. Are you aware of anybody ever</p> <p>11 informing the retail boards that Highland had</p> <p>12 declared a default under the NexPoint note?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Are you aware of anybody telling the</p> <p>15 retail board that Highland made a demand for</p> <p>16 payment under the 2019 notes that you signed on</p> <p>17 behalf of HCMFA?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Let's – let's see if there is a</p> <p>20 response to Ms. Thedford's email, if we can</p> <p>21 scroll up.</p> <p>22 Do you see you responded to</p> <p>23 Ms. Thedford five minutes after she provided</p> <p>24 the draft response to you?</p> <p>25 A. Yes.</p>	<p>Page 183</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And do you see that Dustin</p> <p>3 Norris is copied on this email?</p> <p>4 A. Yes, he is.</p> <p>5 Q. Great. Do you know whether</p> <p>6 Mr. Norris held any positions at either of the</p> <p>7 advisors as of October 6, 2020?</p> <p>8 A. I will go back to – I'm not the</p> <p>9 legal expert of what appoints you or how or</p> <p>10 why, but you did see Dustin's name on the</p> <p>11 incumbency certificate that you produced</p> <p>12 earlier.</p> <p>13 Q. Do you know what his title was in</p> <p>14 October of 2020?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't – I don't recall.</p> <p>17 Q. Was he – did he have a title with</p> <p>18 each of the advisors, to the best of your</p> <p>19 recollection?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know why he is included on</p> <p>22 this email string?</p> <p>23 A. I didn't add Dustin. It looks like</p> <p>24 Lauren did. I don't know why she added him or</p> <p>25 not. You would have to ask her.</p>
<p>Page 184</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Does Mr. Norris play a role in</p> <p>3 formulating the advisors' responses to the</p> <p>4 questions asked by the retail board in</p> <p>5 connection with the 15(c) annual review?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. He – Dustin Norris is there in the</p> <p>8 board meetings. But – so he has a role, yes.</p> <p>9 Q. Okay. And does Mr. Norris hold any</p> <p>10 positions, to the best of your knowledge, in</p> <p>11 relation to any of the retail funds?</p> <p>12 A. I don't – I don't believe he does.</p> <p>13 Q. How about Mr. Post, do you know</p> <p>14 whether Mr. Post holds any position in either</p> <p>15 of the advisors?</p> <p>16 A. I mean, he – he – yes.</p> <p>17 Q. What is your understanding of the</p> <p>18 positions that Mr. Post holds in relation to</p> <p>19 the advisors?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. He is an employee of NexPoint</p> <p>22 Advisors. He is also the chief compliance</p> <p>23 officer for – for NexPoint.</p> <p>24 Q. Who is the chief compliance officer</p> <p>25 for HCMFA, if you know?</p>	<p>Page 185</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. That would be Jason as well.</p> <p>4 Q. Okay. Now, looking at your</p> <p>5 response, you noted initially that nothing was</p> <p>6 owed under shared services. Do I have that</p> <p>7 right in substance?</p> <p>8 A. Yeah. I think I'm being responsive</p> <p>9 to Lauren's question here, whether any of the</p> <p>10 shared service invoices are outstanding.</p> <p>11 Q. Right.</p> <p>12 A. Yes.</p> <p>13 Q. And that is because – and that is</p> <p>14 because the retail the retail board has asked</p> <p>15 for the disclosure of all material obligations</p> <p>16 that were owed to HCMLP either then or in the</p> <p>17 future; isn't that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 Q. We can go back down and look.</p> <p>20 A. Look, I don't know if that's a</p> <p>21 material item, I mean, again, but sure.</p> <p>22 Q. Okay. But there were no shared</p> <p>23 services outstanding; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. That is what this email seems to</p>

<p>Page 186</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 indicate.</p> <p>3 Q. And you wouldn't have written it if</p> <p>4 you didn't believe it to be true at the time;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And when you referred to shared</p> <p>8 services outstanding, what you meant there was</p> <p>9 that neither NexPoint nor HCMFA owed Highland</p> <p>10 any money under the shared services agreements</p> <p>11 that they had with Highland as of October 6th,</p> <p>12 2020; right?</p> <p>13 A. I don't know if it is as of October</p> <p>14 6, 2020 or if it was from – like through the</p> <p>15 financials – through the date of the</p> <p>16 financials as of June 30.</p> <p>17 Q. Okay. And then you noted that</p> <p>18 HCMA – the HCMFA note is a demand note; right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you referred Ms. Thedford</p> <p>21 to Kristin Hendrix for the term of the NexPoint</p> <p>22 note. Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And then you refer to that agreement</p> <p>25 that is referenced in the 2018 audited</p>	<p>Page 187</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financials about Highland's agreement not to</p> <p>3 make demand upon HCMFA until May 2021; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then – and then the next thing</p> <p>6 you write is that the attorneys think that BK</p> <p>7 doesn't change that, but don't know for sure at</p> <p>8 the end of the day.</p> <p>9 Do you see that sentence?</p> <p>10 A. Yes.</p> <p>11 Q. Which attorneys were you referring</p> <p>12 to?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have a conversation with</p> <p>15 attorneys concerning whether the bankruptcy</p> <p>16 would change or alter in any way the agreement</p> <p>17 not to make a demand under the HCMFA note?</p> <p>18 A. Look, yeah, I mean, I don't</p> <p>19 specifically remember, but generally, I mean,</p> <p>20 it is in this email. I don't – I don't – I</p> <p>21 don't – I don't remember who I talked to or,</p> <p>22 you know, was it inside counsel, outside</p> <p>23 counsel, but obviously I talked to somebody.</p> <p>24 Q. Do you have any recollection –</p> <p>25 A. Well, I don't even know if it's –</p>
<p>Page 188</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 actually, it may not even have been me. I say</p> <p>3 the attorneys in, you know, a lot of – like I</p> <p>4 talked about the team.</p> <p>5 It could have been someone on the</p> <p>6 team, like, hey, we need to run this down, and</p> <p>7 maybe they talked to attorneys again and</p> <p>8 relayed that information to me.</p> <p>9 So I really don't know if I spoke or</p> <p>10 someone else did or – or, I mean, and maybe it</p> <p>11 wasn't even from corporate accounting. Maybe</p> <p>12 it was, you know, other – I'm kind of</p> <p>13 summarizing, you know, again, so I don't really</p> <p>14 know – I can't really say for sure. I don't</p> <p>15 remember how I came about of this knowledge.</p> <p>16 Q. I appreciate your efforts,</p> <p>17 Mr. Waterhouse, but I will just tell you that</p> <p>18 if I ask a question and you don't know the</p> <p>19 answer or you don't recall, I'm happy to accept</p> <p>20 that. I don't – I don't want you to</p> <p>21 speculate, so I want to be clear about that.</p> <p>22 So I appreciate it.</p> <p>23 Let me just ask you simply: Do you</p> <p>24 know what attorneys – can you identify any of</p> <p>25 the attorneys who thought that the bankruptcy</p>	<p>Page 189</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 process didn't change the agreement?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. Perfect.</p> <p>5 And then let's look at the last</p> <p>6 sentence. It says, quote: The response should</p> <p>7 include, as I covered in the board meeting,</p> <p>8 that both entities have the full faith and</p> <p>9 backing from Jim Dondero, and to my knowledge</p> <p>10 that hasn't changed.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Prior to October 6th, 2020,</p> <p>14 had you told the retail board that HCMFA and</p> <p>15 NexPoint have the full faith and backing from</p> <p>16 Jim Dondero?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember in the context in</p> <p>19 which you told the retail board that?</p> <p>20 A. I mean, generally, yes.</p> <p>21 Q. Tell me what you recall.</p> <p>22 A. So we were walking through the</p> <p>23 financials from the advisors; right? So as I</p> <p>24 described to you, you have got HCMFA and NPA.</p> <p>25 And these – the financials, you know, show</p>

<p>Page 190</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 they have liabilities on them that exceed</p> <p>3 assets.</p> <p>4 So the retail board has asked, okay,</p> <p>5 you know, how – you know, if – if these</p> <p>6 liabilities come due or they're payable, you</p> <p>7 know, how does that come about?</p> <p>8 And, you know, the response is,</p> <p>9 well, the advisors have the – the full faith</p> <p>10 and backing from – from Jim Dondero.</p> <p>11 Q. And how did you know that the</p> <p>12 advisors had the full faith and backing from</p> <p>13 Jim Dondero? What was the basis for that</p> <p>14 statement that you made to the retail board?</p> <p>15 A. I talked to Jim about it at some</p> <p>16 point in the past.</p> <p>17 Q. And did you tell Mr. Dondero that</p> <p>18 you were going to inform the retail board that</p> <p>19 the advisors had his full faith and backing</p> <p>20 before you actually told that to the retail</p> <p>21 board?</p> <p>22 A. I don't recall having that</p> <p>23 conversation.</p> <p>24 Q. Do you recall if you ever informed</p> <p>25 Mr. Dondero that you had disclosed or told the</p>	<p>Page 191</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 retail board that the advisors had the full</p> <p>3 faith and backing of Mr. – Mr. Dondero?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall discussing that with</p> <p>7 him at the time.</p> <p>8 Q. When you told this to the board, was</p> <p>9 Mr. Dondero participating in the discussion?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Withdrawn. Was it not – withdrawn.</p> <p>12 Do you recall whether – when you</p> <p>13 covered this issue with the board, was that in</p> <p>14 a – a Zoom call or a Webex call? Was it a</p> <p>15 telephone call? Was it in-person? Like where</p> <p>16 were you physically in relation to the board?</p> <p>17 A. I believe I was at home.</p> <p>18 Q. Okay. Can you identify every person</p> <p>19 that you recall who was present for this</p> <p>20 disclosure other than – other than the board</p> <p>21 members themselves?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't recall everyone on the call.</p> <p>25 Q. Can you identify anybody who was on</p>
<p>Page 192</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the call?</p> <p>3 A. Other than the board members?</p> <p>4 Q. Yes.</p> <p>5 A. Lauren Thedford. I mean, there</p> <p>6 are – there are many – my section is just one</p> <p>7 of many sections that are just – you know, as</p> <p>8 you can appreciate, this is a long board</p> <p>9 meeting.</p> <p>10 I can't recall specifically, really</p> <p>11 even generally, or who was on when this was</p> <p>12 discussed. But Lauren was typically on for the</p> <p>13 entire time.</p> <p>14 Q. I apologize if I asked you this, but</p> <p>15 do either of Mr. Norris or Mr. Post hold any</p> <p>16 positions relative to the retail funds?</p> <p>17 A. I think you asked me this already,</p> <p>18 John.</p> <p>19 Q. Okay. I just don't recall. Can you</p> <p>20 just refresh my recollection if I did, in fact,</p> <p>21 ask you the question?</p> <p>22 A. I don't believe – if we can go</p> <p>23 back. I don't believe Mr. Norris has a title</p> <p>24 at the retail funds. Mr. – and Mr. Post is</p> <p>25 the CCO of the advisor, the advisors.</p>	<p>Page 193</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know if either of them</p> <p>3 have a position with the retail board – with</p> <p>4 the retail funds?</p> <p>5 A. I don't believe Mr. Norris has a</p> <p>6 position with the retail funds.</p> <p>7 Q. All right. What about Mr. Post?</p> <p>8 A. Mr. Post is the CCO of the advisors.</p> <p>9 Q. Okay. Does he hold any position –</p> <p>10 A. I don't believe so.</p> <p>11 Q. – with the retail funds?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay.</p> <p>14 A. I don't know if being the CCO for</p> <p>15 the advisor conveys something for the retail</p> <p>16 funds. Again, I am not – that is the legal</p> <p>17 compliance part of it. I don't know.</p> <p>18 Q. Why did you tell the retail board</p> <p>19 that the advisors have the full faith and</p> <p>20 backing from Mr. Dondero?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. It is – it is – it is what has</p> <p>23 been discussed with them prior.</p> <p>24 Q. And were you – were you trying to</p> <p>25 give them comfort that even though the</p>



<p>Page 194</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 liabilities exceeded the assets that the</p> <p>3 advisors would still be able to meet their</p> <p>4 obligations as they become due?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 MS. DEITSCH-PEREZ: Object form.</p> <p>7 A. I – I can't – I don't remember</p> <p>8 specifically the conversation, but generally –</p> <p>9 you know, generally, yes. And that is why –</p> <p>10 but, you know, again, in this email saying, you</p> <p>11 know, I am sure I qualified it with the retail</p> <p>12 board, you know, as I said I like – you know,</p> <p>13 to my knowledge, that hasn't changed. But,</p> <p>14 again, generally – generally that is what I</p> <p>15 remember.</p> <p>16 Q. Okay. Do you recall if in the</p> <p>17 advisors' response to the retail board's</p> <p>18 question if the response included any statement</p> <p>19 concerning Mr. Dondero and – and the full</p> <p>20 faith and backing that he was giving to the</p> <p>21 advisors?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't – I don't remember</p> <p>25 specifically what was provided.</p>	<p>Page 195</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. And I don't really – I don't really</p> <p>4 remember generally either.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: So – so, again, I'm</p> <p>7 just going to ask Mr. Rukavina if your</p> <p>8 clients can produce as soon as possible the</p> <p>9 15(c) response, the written response that</p> <p>10 the advisors made, if any, to the board's</p> <p>11 Question No. 2.</p> <p>12 I'm not looking for the whole</p> <p>13 response, but I certainly want the response</p> <p>14 to Question No. 2.</p> <p>15 Q. Do you have a general understanding</p> <p>16 as to the amount by which – withdrawn.</p> <p>17 Did – did the assets of –</p> <p>18 withdrawn.</p> <p>19 Did the liabilities of HCMFA exceed</p> <p>20 its assets in 2020?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 MS. DEITSCH-PEREZ: Objection, form.</p> <p>23 A. I believe I have already answered</p> <p>24 that question earlier, I think. I believe I</p> <p>25 said yes.</p>
<p>Page 196</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And did the liabilities of</p> <p>3 NexPoint exceed its assets in 2020?</p> <p>4 MS. DEITSCH-PEREZ: Objection to</p> <p>5 form.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Okay. So – so it was only one of</p> <p>8 the two advisors who had liabilities that</p> <p>9 exceeded the value of the assets.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Objection to</p> <p>12 form.</p> <p>13 MS. DANDENEAU: Form.</p> <p>14 A. Yes.</p> <p>15 Q. And do you know, ballpark, the</p> <p>16 amount by which the value of HCMFA's</p> <p>17 liabilities exceeded their assets in 2020?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't – I don't recall.</p> <p>20 MR. MORRIS: I had specifically</p> <p>21 requested in discovery the audited</p> <p>22 financial reports for both advisors and</p> <p>23 NexPoint. I think I may have gotten one</p> <p>24 for NexPoint but I'm still waiting for the</p> <p>25 balance. And I'm going to renew my request</p>	<p>Page 197</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for those documents too.</p> <p>3 Q. Let's go to the next exhibit, which</p> <p>4 is Number 10. So I think it is in your stack,</p> <p>5 Mr. Waterhouse.</p> <p>6 MR. MORRIS: And we can take the one</p> <p>7 down from the screen and put up Number 10</p> <p>8 for everybody.</p> <p>9 (Exhibit 10 marked.)</p> <p>10 Q. And I don't know if you have ever</p> <p>11 seen this before, but I'm really putting it up</p> <p>12 on the screen for purposes of turning to the</p> <p>13 very last page of the document.</p> <p>14 So this is a document that we have</p> <p>15 been – that we premarked as Exhibit 10. And</p> <p>16 we're turning to the last page of the document,</p> <p>17 which is a document that was filed in the</p> <p>18 adversary proceeding 21-3004. And – no, I</p> <p>19 apologize, I think we – right there. Perfect.</p> <p>20 And it is page 31 of 31.</p> <p>21 MR. MORRIS: I think there may have</p> <p>22 been some something erroneously stapled to</p> <p>23 the hard copy that I gave you folks, but</p> <p>24 I'm looking for page 31 of 31 in the</p> <p>25 document that begins with the first page of</p>

<p>Page 198</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 10.</p> <p>3 Q. Do you have that, Mr. Waterhouse?</p> <p>4 A. I don't have it yet. I'm looking.</p> <p>5 Q. All right. If you look at the top</p> <p>6 right-hand corner, you will see it says page</p> <p>7 hopefully something of 31?</p> <p>8 A. Yes, I've got it now.</p> <p>9 Q. Okay. You have got 31 of 31. You</p> <p>10 can take a moment to read that, if you would</p> <p>11 like.</p> <p>12 A. (Reviewing document.) Okay.</p> <p>13 Q. Have you ever seen this before?</p> <p>14 A. I don't know if I have seen this</p> <p>15 specific document, but, you know, I've –</p> <p>16 I'm – I'm aware of it.</p> <p>17 Q. And is this the document that you</p> <p>18 had in mind when you sent that email to</p> <p>19 Ms. Thedford that we just looked at where you</p> <p>20 said that Highland had agreed not to make a</p> <p>21 demand upon HCMFA until May 2021?</p> <p>22 A. Honestly, I don't – it wasn't this</p> <p>23 document. I mean, it's something like this,</p> <p>24 yes. I mean, yes.</p> <p>25 Q. Well –</p>	<p>Page 199</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. It is something like this, but I</p> <p>3 don't think it was this specific document.</p> <p>4 Q. Well, but this document does say in</p> <p>5 the last sentence that Highland agreed not to</p> <p>6 seek – not to demand payment from HCMFA prior</p> <p>7 to May 31, 2021; right?</p> <p>8 A. Yes.</p> <p>9 Q. And are you aware of any other</p> <p>10 document that was ever created pursuant to</p> <p>11 which Highland agreed not to demand payment on</p> <p>12 amounts owed by HCMFA before May 31, 2021?</p> <p>13 A. Hold on. Are you asking, am I aware</p> <p>14 of a document that by HCMFA that basically says</p> <p>15 otherwise?</p> <p>16 Q. No. Let me try again.</p> <p>17 Are you aware of any other document</p> <p>18 pursuant to which – pursuant to which Highland</p> <p>19 agreed not to make a demand on HCMFA until May</p> <p>20 31st, 2021?</p> <p>21 A. I'm – I think there was something</p> <p>22 in connection with – with the – with the</p> <p>23 audit that basically says the same thing.</p> <p>24 Q. Okay. And do you think that the</p> <p>25 audit is referring to this particular document?</p>
<p>Page 200</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. All right. This document is dated</p> <p>4 April 15, 2019. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And do you remember that the audit</p> <p>7 was completed on June 3rd, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that the audited</p> <p>10 financials – and I'm happy to pull them up if</p> <p>11 you would like, but do you recall that the</p> <p>12 audited financials included a reference to the</p> <p>13 agreement pursuant to which Highland agreed not</p> <p>14 to make a demand until May 31st, 2021?</p> <p>15 A. Yes, I remember.</p> <p>16 Q. And as part of the process, would</p> <p>17 you have expected the corporate accounting team</p> <p>18 to have provided a copy of this document to</p> <p>19 PwC?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes, I would have expected something</p> <p>22 like this, or again, you know, some document</p> <p>23 that basically states – states the deferral</p> <p>24 till May 31 of 2020.</p> <p>25 Q. Okay.</p>	<p>Page 201</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. May 31 of 2021, excuse me.</p> <p>3 Q. And this document states the</p> <p>4 deferral that you just described; correct?</p> <p>5 A. It does.</p> <p>6 Q. And this document states the</p> <p>7 deferral that was described in the audited</p> <p>8 financial statements that we looked at before;</p> <p>9 correct?</p> <p>10 A. It does.</p> <p>11 MR. MORRIS: Okay. Can we scroll</p> <p>12 down just a little bit to see who signed on</p> <p>13 behalf of the acknowledgment there.</p> <p>14 Q. Okay. So Mr. Dondero signed this</p> <p>15 document on behalf of both HCMFA and Highland;</p> <p>16 do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay. Did you discuss this document</p> <p>19 or the – withdrawn.</p> <p>20 Did you discuss the concept of the</p> <p>21 deferral with Mr. Dondero in the spring of</p> <p>22 2019?</p> <p>23 A. I think I testified I don't recall.</p> <p>24 Q. Okay. Do you know whose idea it was</p> <p>25 to issue the acknowledgment in this form?</p>

<p>Page 202</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 MR. MORRIS: Can we scroll back up</p> <p>4 to the document, please.</p> <p>5 Q. Do you see in the beginning it says,</p> <p>6 reference is made to certain outstanding</p> <p>7 amounts loaned from Highland to HCMFA for</p> <p>8 funding ongoing operations.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And were you aware as the CFO of</p> <p>12 Highland and as the treasurer of HCMFA that as</p> <p>13 of April 15, 2019, Highland had made certain</p> <p>14 loans to HCMFA to fund HCMFA's ongoing</p> <p>15 operations?</p> <p>16 A. Yes.</p> <p>17 Q. And were you aware that those loans</p> <p>18 were payable on demand and remained outstanding</p> <p>19 as of December 31st, 2018?</p> <p>20 A. Yes.</p> <p>21 Q. And were you aware that those</p> <p>22 amounts were payable on demand, and they</p> <p>23 remained outstanding as of April 15, 2019?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 203</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Well, this – this document dated</p> <p>3 April 15, 2019 says they have been deferred to</p> <p>4 May 31, 2021.</p> <p>5 Q. Right. But I'm just sticking to the</p> <p>6 first paragraph where they refer to the</p> <p>7 outstanding amounts. And in the end it says</p> <p>8 the – it remained outstanding on December</p> <p>9 31st, 2018, and I think you told me that you</p> <p>10 understood that, and then I'm just trying to</p> <p>11 capture the last piece of it.</p> <p>12 Did you understand that there were</p> <p>13 amounts outstanding from the loan that Highland</p> <p>14 made to HCMFA to fund ongoing operations as of</p> <p>15 April 15th, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. Let's look at the next</p> <p>18 sentence. HCMFA expects that it may be unable</p> <p>19 to repay such amounts should they become due</p> <p>20 for the period commencing today and continuing</p> <p>21 through May 31st, 2021.</p> <p>22 Do you see that?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. I do.</p> <p>25 Q. As the CFO – withdrawn.</p>
<p>Page 204</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 As the treasurer of HCMFA, did you</p> <p>3 believe that – do you believe that statement</p> <p>4 was true and accurate at the time it was</p> <p>5 rendered?</p> <p>6 A. I mean, it – it – the answer to</p> <p>7 that is I really didn't have any – I didn't</p> <p>8 have an opinion really.</p> <p>9 Q. Did you do anything to educate</p> <p>10 yourself in April of 2019 on the issue of</p> <p>11 whether HCMFA could repay the amounts that it</p> <p>12 owed to Highland should they become due?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did you at any time form any</p> <p>15 opinions as to HCMFA's ability to repay all</p> <p>16 amounts due to Highland should they become due?</p> <p>17 A. Not really. I guess I don't...</p> <p>18 Q. Well, you told the retail board that</p> <p>19 HCMFA's liabilities exceeded their assets in</p> <p>20 2020; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Based on the work that you did to</p> <p>23 prepare for the retail board, did you form any</p> <p>24 view as to whether HCMFA would be unable to</p> <p>25 repay the amounts that it owed to Highland</p>	<p>Page 205</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 should they become due?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. I mean, I – when you look at that,</p> <p>5 to answer you, completely, you know, again,</p> <p>6 if – the response I gave the retail board was,</p> <p>7 you know, the – the advice – HCMFA advisors</p> <p>8 have the – have the full faith and backing of</p> <p>9 Jim Dondero. So I didn't form an opinion of</p> <p>10 whether the advisor could pay it or not.</p> <p>11 Q. Did you form any view as to whether</p> <p>12 the advisors could repay the amounts that it</p> <p>13 owed to Highland should they become due without</p> <p>14 the full faith and backing of Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Form.</p> <p>17 A. I mean, if you – if you – if you</p> <p>18 take that last statement out, I mean, it would</p> <p>19 be difficult for HCMFA to pay back demand notes</p> <p>20 at that time.</p> <p>21 Q. And it was precisely for that reason</p> <p>22 that you told the retail board that – that the</p> <p>23 retail – that the advisors had the full faith</p> <p>24 and backing of Mr. Dondero; correct?</p> <p>25 MS. DANDENEAU: Objection to form.</p>

<p>Page 206</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, yes, as the mouthpiece, I</p> <p>3 was relaying information.</p> <p>4 Q. Okay. And you relayed that</p> <p>5 information with the knowledge and approval of</p> <p>6 Mr. Dondero; correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. As I stated in the email, I don't</p> <p>10 believe, and I think I testified I don't</p> <p>11 believe I had conversations with Mr. Dondero at</p> <p>12 the time of that board meeting.</p> <p>13 Q. Did you tell the retail board that</p> <p>14 the advisors had the full faith and backing of</p> <p>15 Mr. Dondero without Mr. Dondero's prior</p> <p>16 approval?</p> <p>17 A. Yeah, I – I – yes, I'm – like I</p> <p>18 said, I think I testified earlier, I'm sure I</p> <p>19 qualified it as well.</p> <p>20 Q. What do you mean by that?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. Again – again, like I said in the</p> <p>23 email, it has the full faith and backing of Jim</p> <p>24 Dondero unless that has changed.</p> <p>25 Q. Actually that is not what you said,</p>	<p>Page 207</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so let's put the email back up.</p> <p>3 A. It is – it is – it is in the</p> <p>4 email.</p> <p>5 Q. Let's put the email back up. You</p> <p>6 didn't say unless it has changed. You said you</p> <p>7 believe it hasn't changed; right?</p> <p>8 A. Okay. And to my knowledge that</p> <p>9 hasn't changed, that is what it says.</p> <p>10 Q. That's right.</p> <p>11 A. But, again, I mean, that is – I</p> <p>12 don't know everything. And I'm not in every</p> <p>13 conversation. I'm not – to presume that I am,</p> <p>14 is – and you have to put myself – as you</p> <p>15 started this out, Mr. Morris, I was at home in</p> <p>16 October of 2020 with COVID – or, you know,</p> <p>17 under these COVID times that we described is</p> <p>18 very difficult.</p> <p>19 We have all been working at home for</p> <p>20 really the first time ever, undergoing</p> <p>21 processes, procedures, control environments</p> <p>22 that have been untested, and there is poor</p> <p>23 communication.</p> <p>24 So I am relaying, as I'm telling you</p> <p>25 now, what is in the email. And unless</p>
<p>Page 208</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 something has changed – to my knowledge, it</p> <p>3 hasn't changed, but it could have changed.</p> <p>4 Q. When you say that the advisors have</p> <p>5 the full faith and backing from Mr. Dondero,</p> <p>6 did you intend to convey that, to the extent</p> <p>7 the advisors were unable to satisfy their</p> <p>8 obligations as they become due, Mr. Dondero</p> <p>9 would do it for them?</p> <p>10 MS. DANDENEAU: Object to the form.</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 And, John, we have given you a lot</p> <p>14 of leeway here but this does not seem</p> <p>15 relevant to this case. You seem sort of</p> <p>16 taking a complete sort of diversion into</p> <p>17 the allegations and the complaint just</p> <p>18 filed on Friday, and so I would ask you to</p> <p>19 move on because –</p> <p>20 MR. MORRIS: And I will tell you –</p> <p>21 I will tell you that I have never read that</p> <p>22 complaint cover-to-cover. I have nothing</p> <p>23 to do with the prosecution of those claims.</p> <p>24 And this issue that we're talking about</p> <p>25 right now is related solely to the</p>	<p>Page 209</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that your clients refuse</p> <p>3 to pay.</p> <p>4 So I'm going to continue to ask my</p> <p>5 questions, and I would ask the court</p> <p>6 reporter to read back my last question.</p> <p>7 (Record read.)</p> <p>8 MS. DEITSCH-PEREZ: And then I</p> <p>9 believe there were objections to form.</p> <p>10 Q. You can answer the question.</p> <p>11 A. Yes.</p> <p>12 Q. Thank you very much, sir.</p> <p>13 MR. MORRIS: Can we go back to the</p> <p>14 other document, please?</p> <p>15 Q. Mr. Waterhouse, do you know if this</p> <p>16 document was ever shared with the retail board?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever share it with the</p> <p>19 retail board?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever tell the retail board</p> <p>22 about the substance of this document?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you ever tell the retail board</p> <p>25 that Highland had agreed not to make a demand</p>

<p>Page 210</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 against HCMFA until May 2021?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know whether anybody on</p> <p>5 behalf of the advisors ever informed the retail</p> <p>6 board that Highland had agreed on April 15,</p> <p>7 2019, not to make a demand against HCMFA under</p> <p>8 the promissory notes?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you instruct Ms. Thedford or</p> <p>11 anybody else responding to the retail board's</p> <p>12 15(c) inquiry to disclose this document?</p> <p>13 A. Did I instruct Ms. Thedford or</p> <p>14 anyone else to -- to -- to produce this, to</p> <p>15 disclose this document? Is that what you -- I</p> <p>16 just want to make sure.</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yeah, I don't -- I don't recall.</p> <p>19 Q. Did you instruct anybody to inform</p> <p>20 the retail board, in response to their question</p> <p>21 as part of the 15(c) process, to -- to tell the</p> <p>22 retail board about Highland's agreement not to</p> <p>23 make a demand until 2021?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't recall.</p>	<p>Page 211</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever inform PwC that HCMFA's</p> <p>3 liabilities exceeded its assets?</p> <p>4 MS. DANDENEAU: Object to the form.</p> <p>5 A. I don't -- I don't think I told</p> <p>6 them. I mean, they -- they audited the</p> <p>7 financial statements.</p> <p>8 Q. Did -- do you know if anybody on</p> <p>9 behalf of Highland ever informed</p> <p>10 PricewaterhouseCoopers that HCMFA may be unable</p> <p>11 to repay amounts owing to Highland, should they</p> <p>12 become due?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Yes. Again, I think I testified</p> <p>15 earlier that -- that this was communicated to</p> <p>16 the auditors.</p> <p>17 Q. Ideally --</p> <p>18 A. I don't know who exactly did that.</p> <p>19 I don't recall doing it, but, yeah, it was --</p> <p>20 it was communicated. And that is why -- I</p> <p>21 mean, there is a disclosure in the financial</p> <p>22 statements; right?</p> <p>23 Q. There is, and that disclosure</p> <p>24 relates to the last sentence of this document;</p> <p>25 correct?</p>
<p>Page 212</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall looking in the</p> <p>4 document and seeing anything that was disclosed</p> <p>5 with respect to the sentence above that?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether anybody on</p> <p>8 behalf of Highland ever informed</p> <p>9 PricewaterhouseCoopers that HCMFA expects that</p> <p>10 it may be unable to repay amounts due and owing</p> <p>11 to Highland should they become due?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. I think that is the third time.</p> <p>14 A. I don't recall. Again, as I said,</p> <p>15 we -- all of this was given to the auditors.</p> <p>16 Q. Do you know if Highland received</p> <p>17 anything of value in exchange for its agreement</p> <p>18 not to demand payment on amounts owed by HCMFA</p> <p>19 prior to May 31st, 2021?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form. That is the second time.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. I have answered this question.</p> <p>24 MR. RUKAVINA: Hold on. Object to</p> <p>25 legal conclusion. Go ahead.</p>	<p>Page 213</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I have answered this question</p> <p>3 before.</p> <p>4 Q. And the answer was no?</p> <p>5 A. I'm not aware.</p> <p>6 Q. Now, this acknowledgment can't</p> <p>7 possibly apply to the two notes that you signed</p> <p>8 on behalf of HCMFA because those notes were</p> <p>9 signed on May 2nd and May 3rd, 2019; is that</p> <p>10 right?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Unless there is a drafting error.</p> <p>13 Q. Okay. Are you aware of a drafting</p> <p>14 error?</p> <p>15 A. I'm not aware. I didn't -- I wasn't</p> <p>16 part of -- I didn't sign this note or this</p> <p>17 acknowledgment. I didn't draft it.</p> <p>18 Q. But you do see it is dated April 15,</p> <p>19 2019; right?</p> <p>20 A. Yes.</p> <p>21 Q. And this was a document that was</p> <p>22 actually included by the advisors in a pleading</p> <p>23 they filed with the Court; right?</p> <p>24 MR. RUKAVINA: Well, I don't know</p> <p>25 that so I object to form.</p>



<p>Page 214</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Let's go to the first page of</p> <p>3 the document and just confirm that.</p> <p>4 MR. AIGEN: Mr. Morris, I just note</p> <p>5 that you already said there was some error</p> <p>6 with the document that is listed as</p> <p>7 exhibit –</p> <p>8 MR. MORRIS: No. No, no, no.</p> <p>9 MS. DEITSCH-PEREZ: Oh, okay.</p> <p>10 MR. MORRIS: What I said is that</p> <p>11 there is a few pages that were mistakenly</p> <p>12 stapled to the end of the document.</p> <p>13 MS. DEITSCH-PEREZ: Okay.</p> <p>14 MR. MORRIS: There is no problem</p> <p>15 with this document.</p> <p>16 MS. DEITSCH-PEREZ: And just so</p> <p>17 we're clear that the document – the pages</p> <p>18 that start with defendant's amended answer</p> <p>19 are not intended to be part of this</p> <p>20 document?</p> <p>21 MR. MORRIS: That's correct.</p> <p>22 MS. DEITSCH-PEREZ: And that the –</p> <p>23 but it is your representation that the rest</p> <p>24 of the document is – is – is correct</p> <p>25 because we don't – we don't have any way</p>	<p>Page 215</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of verifying that, we're just –</p> <p>3 MR. MORRIS: You do, actually. You</p> <p>4 could just go to <b>Docket No. 21-3004</b>.</p> <p>5 MS. DEITSCH-PEREZ: If you want to</p> <p>6 stop this deposition so we can go and pull</p> <p>7 that document up, we're happy to do it. So</p> <p>8 I am just asking you for your</p> <p>9 representation.</p> <p>10 MR. MORRIS: Sure. I gave that.</p> <p>11 MS. DEITSCH-PEREZ: Okay.</p> <p>12 Q. So do you see that this is a</p> <p>13 document that was actually filed with the Court</p> <p>14 by Highland Capital Management Fund Advisors?</p> <p>15 A. No. I get with the first page in</p> <p>16 the section. Maybe I'm looking at the wrong</p> <p>17 thing. It says, Highland Capital Management.</p> <p>18 Q. Don't worry about it. Don't worry</p> <p>19 about it.</p> <p>20 A. Maybe I went back – okay.</p> <p>21 MR. MORRIS: All right. Can we put</p> <p>22 up on the screen Exhibit 2.</p> <p>23 (Exhibit 2 marked.)</p> <p>24 MR. MORRIS: I think it is</p> <p>25 Exhibit 1.</p>
<p>Page 216</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: I'm sorry, John, did</p> <p>3 you say Exhibit 2 or Exhibit 1?</p> <p>4 MR. MORRIS: It is Exhibit 2 in the</p> <p>5 binders so it is premarked Exhibit 2. And</p> <p>6 now I'm asking – right there – going to</p> <p>7 Exhibit 1 to the document that was marked</p> <p>8 as Exhibit 2.</p> <p>9 MS. DANDENEAU: Got it. In the</p> <p>10 binder there is no –</p> <p>11 MS. DEITSCH-PEREZ: There is no</p> <p>12 Exhibit 1.</p> <p>13 MR. MORRIS: All right. So look at</p> <p>14 the one on the screen.</p> <p>15 Q. Do you see, Mr. Waterhouse, that</p> <p>16 this is a promissory note dated May 31st, 2017,</p> <p>17 in the approximate amount of \$30.7 million?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that the maker of the</p> <p>20 note is NexPoint?</p> <p>21 A. Yes.</p> <p>22 Q. And that Highland is the payee; is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you see in Paragraph 2</p>	<p>Page 217</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is an annual installment note?</p> <p>3 A. Can you scroll down.</p> <p>4 Q. Sure.</p> <p>5 MR. MORRIS: Can we scroll down –</p> <p>6 yeah, there you go.</p> <p>7 A. Right there, yeah. Yes.</p> <p>8 MR. MORRIS: And can we scroll down</p> <p>9 to the signature line.</p> <p>10 Q. And do you recognize that as</p> <p>11 Mr. Dondero's signature?</p> <p>12 A. Yes.</p> <p>13 Q. And is this the promissory note that</p> <p>14 we talked about earlier where NexPoint had made</p> <p>15 certain payments in the aggregate amount of</p> <p>16 about 6 to \$7 million against principal and</p> <p>17 interest?</p> <p>18 A. I don't recall discussing the</p> <p>19 aggregate principal amounts of 6 to \$7 million,</p> <p>20 but – so I don't – I don't recall that prior</p> <p>21 discussion with those amounts.</p> <p>22 Q. All right. Let's take a look.</p> <p>23 NexPoint always included this promissory note</p> <p>24 as a liability on its audited financial</p> <p>25 statements; right?</p>

<p>Page 218</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And NexPoint had its financial</p> <p>4 statements audited; isn't that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And was the process of NexPoint's</p> <p>7 audit similar to the process you described</p> <p>8 earlier for Highland and HCMFA?</p> <p>9 A. Yes, it is similar.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we put up</p> <p>12 NexPoint's audited financials and let</p> <p>13 everybody know what exhibit number it is,</p> <p>14 La Asia?</p> <p>15 MS. CANTY: It is going to be</p> <p>16 Exhibit 46.</p> <p>17 (Exhibit 46 marked.)</p> <p>18 Q. And do you see, sir, that we've put</p> <p>19 up NexPoint Advisors' consolidated financial</p> <p>20 statements and supplemental information for the</p> <p>21 period ending December 31st, 2019?</p> <p>22 A. Yes.</p> <p>23 Q. Did you participate in the process</p> <p>24 whereby these audited financial statements were</p> <p>25 issued?</p>	<p>Page 219</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I didn't participate directly, as</p> <p>3 I've described before, about the -- the team</p> <p>4 performing the audit.</p> <p>5 Q. Do you recall when the audit of</p> <p>6 NexPoint's financial statements for the period</p> <p>7 ending December 31st, 2019 was completed?</p> <p>8 A. Yes.</p> <p>9 Q. And when do you recall it being</p> <p>10 completed?</p> <p>11 A. In January of 2021.</p> <p>12 Q. Do you know why the 2019 audit</p> <p>13 report wasn't completed until January of 2021?</p> <p>14 A. Yes.</p> <p>15 Q. Why was the NexPoint audit report</p> <p>16 for the period ending 12/31/19 not completed</p> <p>17 until January 2021?</p> <p>18 A. Because we had to deal with working</p> <p>19 from home from -- with COVID, and on top of all</p> <p>20 of our daily responsibilities and job duties</p> <p>21 at -- at providing -- at Highland providing</p> <p>22 services to NexPoint, we had to do all of this</p> <p>23 extra work for a bankruptcy that was filed in</p> <p>24 October of 2019.</p> <p>25 MR. MORRIS: Can we go to the</p>
<p>Page 220</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 balance sheet on page 3? Okay. Stop right</p> <p>3 there.</p> <p>4 Q. Do you see under the liabilities</p> <p>5 section, the last item is note payable to</p> <p>6 affiliate?</p> <p>7 A. Yes.</p> <p>8 Q. And is that the note that we just</p> <p>9 looked at?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 Q. Withdrawn.</p> <p>12 Is that the approximately</p> <p>13 \$30 million note that we just looked at that</p> <p>14 was dated from 2017?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I believe no.</p> <p>17 Q. Okay. You're not aware of any other</p> <p>18 note that was outstanding from NexPoint to</p> <p>19 Highland as of the end of the year 2019, other</p> <p>20 than that one \$30 million note; right?</p> <p>21 A. I don't recall.</p> <p>22 Q. And as of the end of 2019, the</p> <p>23 principal amount that was due on the note was</p> <p>24 approximately \$23 million; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 221</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. Approximately.</p> <p>4 Q. And does that refresh your</p> <p>5 recollection that between the time the note was</p> <p>6 executed and the end of 2019, that NexPoint had</p> <p>7 paid down approximately \$7 million?</p> <p>8 A. Yes. If we are just doing the math,</p> <p>9 yes.</p> <p>10 Q. Okay. Did NexPoint complete its</p> <p>11 audit from 2020?</p> <p>12 A. Sorry, you kind of broke up. Do</p> <p>13 NexPoint complete?</p> <p>14 Q. The audit of its financial</p> <p>15 statements for the period ending December 31st,</p> <p>16 2020?</p> <p>17 A. No.</p> <p>18 Q. No, it's not complete?</p> <p>19 A. No, it is not complete.</p> <p>20 Q. Did HCMFA complete its audit for the</p> <p>21 year ending December 31st, 2020?</p> <p>22 A. No.</p> <p>23 MR. MORRIS: Can we go to page 15,</p> <p>24 please, the paragraph at the bottom.</p> <p>25 Q. Do you see that NexPoint has</p>

<p>Page 222</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 included under notes payable to Highland a</p> <p>3 reference to the amounts that were outstanding</p> <p>4 as of the year-end 2019 under the note that we</p> <p>5 looked at just a moment ago?</p> <p>6 A. Yes. Are you talking about the</p> <p>7 second paragraph?</p> <p>8 Q. I'm actually talking about first</p> <p>9 paragraph. Do you understand that the first</p> <p>10 paragraph is a reference to the 2017 note, and</p> <p>11 the amounts that were -- the principal amount</p> <p>12 that was outstanding as of the end of 2019?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 John, do you mean the first paragraph of</p> <p>15 that page?</p> <p>16 MR. MORRIS: No, the first paragraph</p> <p>17 under notes payable to Highland.</p> <p>18 A. Yeah, I see the paragraph, and</p> <p>19 again, this is what I answered earlier. I</p> <p>20 believe so, just because I don't -- again, this</p> <p>21 is a number in a balance sheet, and without</p> <p>22 matching it up and seeing the detail with the</p> <p>23 schedule like I kind of talked about for</p> <p>24 Highland's financial statements, it is a little</p> <p>25 bit more difficult to tie everything in</p>	<p>Page 223</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 perfectly together.</p> <p>3 Q. Okay. But you're not aware of any</p> <p>4 note that was outstanding at the end of 2019</p> <p>5 from NexPoint to Highland other than whatever</p> <p>6 principal was still due and owing under the</p> <p>7 \$30 million note issued in 2017; correct?</p> <p>8 A. Well, it -- I don't -- there is</p> <p>9 reference in the second paragraph. I don't --</p> <p>10 I don't -- I don't recall what that is</p> <p>11 referring to, so I don't -- I don't know.</p> <p>12 Q. Well, if you listen carefully to my</p> <p>13 question, right, I'm asking about notes that</p> <p>14 were outstanding at the end of 2019, and if we</p> <p>15 look at the paragraph you just referred to, it</p> <p>16 says that during the year there were new notes</p> <p>17 issued totaling \$1.5 million, but by the end of</p> <p>18 the year, no principal or interest was</p> <p>19 outstanding on the notes.</p> <p>20 Do you see that?</p> <p>21 A. Oh, I do, yes.</p> <p>22 Q. So does that refresh your</p> <p>23 recollection that there were no notes</p> <p>24 outstanding from NexPoint to Highland other</p> <p>25 than the principal remaining under the original</p>
<p>Page 224</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$30 million 2017 note that we looked at a</p> <p>3 moment ago?</p> <p>4 A. Well, we're at the bottom of the</p> <p>5 page. Is there anything on page 16?</p> <p>6 Q. That is a fair question, sure. That</p> <p>7 is it.</p> <p>8 A. Okay. So it appears that that is</p> <p>9 the only note that is detailed in the notes in</p> <p>10 the financial statement.</p> <p>11 Q. And you don't have any memory of any</p> <p>12 other note other than the 2017 note, right,</p> <p>13 being outstanding as of the end of the year?</p> <p>14 A. I deal with thousands of</p> <p>15 transactions every year. I don't really have a</p> <p>16 very specific memory for what exactly was</p> <p>17 outstanding.</p> <p>18 MR. MORRIS: Why don't we take a</p> <p>19 break now. We've been going for a little</p> <p>20 while. It's 3:26. Let's come back at</p> <p>21 3:40.</p> <p>22 VIDEOGRAPHER: We're going off the</p> <p>23 record at 3:26 p.m.</p> <p>24 (Recess taken 3:26 p.m. to 3:39 p.m.)</p> <p>25 VIDEOGRAPHER: We are going back on</p>	<p>Page 225</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the record at 3:39 p.m.</p> <p>3 Q. All right. Mr. Waterhouse, we -- I</p> <p>4 don't think we have a lot more here.</p> <p>5 To the best of your knowledge and</p> <p>6 recollection, were all affiliate loans and all</p> <p>7 loans made to Mr. Dondero recorded on</p> <p>8 Highland's books and records as assets of</p> <p>9 Highland?</p> <p>10 MS. DANDENEAU: Object to the form,</p> <p>11 asked and answered.</p> <p>12 A. To my knowledge, yes.</p> <p>13 Q. Okay. Can you recall any loan to</p> <p>14 any affiliate or Mr. Dondero that was not</p> <p>15 recorded on Highland's books and records as an</p> <p>16 asset?</p> <p>17 A. Like during my time as CFO? I don't</p> <p>18 recall.</p> <p>19 Q. How about after the time that you</p> <p>20 were CFO? Did you recall that there was a loan</p> <p>21 by Highland to an affiliate or to Mr. Dondero</p> <p>22 that hadn't been previously recorded on</p> <p>23 Highland's books as an asset?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I guess I don't understand the</p>

<p>Page 226</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 question. I left Highland as of – I'm not</p> <p>3 aware of – I left Highland in February –</p> <p>4 probably the last day of February of 2021.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not – I'm not aware of any –</p> <p>7 I'm not aware of anything past that date.</p> <p>8 Q. Okay. While you were the CFO at</p> <p>9 Highland, did Highland prepare in the ordinary</p> <p>10 course of business a document that reported</p> <p>11 operating results on a monthly basis?</p> <p>12 A. Yes.</p> <p>13 Q. And are you generally familiar with</p> <p>14 the monthly operating reports?</p> <p>15 A. Yeah. You are referring to the</p> <p>16 reports that we filed to the Court every month?</p> <p>17 Q. I apologize, I'm not. I'm taking</p> <p>18 you back to the pre-petition period. There was</p> <p>19 a report that I have seen that I'm going to</p> <p>20 show you, but I'm just asking for your</p> <p>21 knowledge.</p> <p>22 MR. MORRIS: Let's put it up on the</p> <p>23 screen, Exhibit 39.</p> <p>24 (Exhibit 39 marked.)</p> <p>25 Q. Do you see this is a document that</p>	<p>Page 227</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is called operating results?</p> <p>3 A. Yeah, that's the title of it.</p> <p>4 Q. Okay. And was a report of operating</p> <p>5 results prepared by Highland on a monthly basis</p> <p>6 during the time that you served as CFO?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with a document of</p> <p>9 this type? And we can certainly look at the</p> <p>10 next page or two to refresh your recollection.</p> <p>11 A. I'm just looking at the title. I</p> <p>12 don't really – again, as I discussed before, I</p> <p>13 don't have any records or documents or emails</p> <p>14 or appointments or anything that I was able to</p> <p>15 use prior to – prior to this deposition, so</p> <p>16 I'm doing the best I can.</p> <p>17 Q. Okay. You don't need to apologize.</p> <p>18 I'm just asking you if you are familiar with</p> <p>19 the document called Operating Results that was</p> <p>20 prepared on a monthly basis at Highland?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 Q. If you're not, you're not.</p> <p>24 A. I don't believe this was prepared on</p> <p>25 a monthly basis.</p>
<p>Page 228</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that this one</p> <p>3 is – is dated February 2018?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have – do you believe –</p> <p>6 have you ever seen a document that was</p> <p>7 purporting to report operating results for</p> <p>8 Highland?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when you say that you</p> <p>12 don't believe it was produced on a monthly</p> <p>13 basis, was it produced on any periodic bases to</p> <p>14 the best of your recollection?</p> <p>15 A. I believe it was – it was prepared</p> <p>16 on an annual basis.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we look at the next</p> <p>19 page.</p> <p>20 Q. Do you see that there is a statement</p> <p>21 here called: Significant items impacting</p> <p>22 HCMLP's balance sheet?</p> <p>23 And it is dated February 2018.</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall that there was a</p>	<p>Page 229</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 report that Highland prepared that identified</p> <p>3 significant items impacting the balance sheet?</p> <p>4 A. A report that was prepared.</p> <p>5 Q. Let me ask a better question: Did</p> <p>6 Highland prepare reports to the best of your</p> <p>7 recollection that identified significant items</p> <p>8 that impacted its balance sheet?</p> <p>9 A. Well, so Highland prepared a – a</p> <p>10 monthly close package. And maybe I'm</p> <p>11 getting – and – and maybe change names at one</p> <p>12 time or maybe I'm just – again, just</p> <p>13 misremembering – but in that, yes, there is a</p> <p>14 page that would detail just changes in – you</p> <p>15 know, just changes month over month on the</p> <p>16 balance sheet.</p> <p>17 Q. Okay. And maybe it is my fault.</p> <p>18 Maybe I didn't know the proper name for it.</p> <p>19 But let's use the phrase "monthly close</p> <p>20 package."</p> <p>21 Did Highland prepare a monthly close</p> <p>22 package in the ordinary course of business</p> <p>23 during the time that you served as CFO?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. Yes.</p>

<p>Page 230</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did the monthly close package</p> <p>3 that Highland prepared include information</p> <p>4 concerning significant items that impacted</p> <p>5 Highland's balance sheet?</p> <p>6 A. Yes, it had a page like that is –</p> <p>7 that is on the screen that detailed items</p> <p>8 like – of that nature.</p> <p>9 Q. And do you know who – was there</p> <p>10 anybody at Highland who was responsible for</p> <p>11 overseeing the preparation of the monthly</p> <p>12 reporting package?</p> <p>13 A. That would have been – again, it</p> <p>14 varies over time during my tenure as CFO.</p> <p>15 It – it varied over – over time, but – but</p> <p>16 typically a – a corporate accounting manager.</p> <p>17 Q. And who were the corporate</p> <p>18 accounting managers during your tenure as CFO?</p> <p>19 A. It would have been Dave Klos and</p> <p>20 Kristin Hendrix.</p> <p>21 Q. And did the corporate accounting</p> <p>22 manager deliver to you drafts of the monthly</p> <p>23 close package before it was finalized?</p> <p>24 A. Sometimes.</p> <p>25 Q. Was that the practice even if there</p>	<p>Page 231</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were exceptions to the practice?</p> <p>3 A. The practice meaning that they</p> <p>4 sometimes lured them to me?</p> <p>5 Q. That that was the expectation even</p> <p>6 if circumstances prevented that from happening</p> <p>7 from time to time.</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I – I would say it started out that</p> <p>11 way but over the years it – it was not</p> <p>12 enforced.</p> <p>13 Q. Okay. So you were – you reviewed</p> <p>14 and approved monthly – monthly reporting</p> <p>15 packages for a certain period of time and then</p> <p>16 over time you stopped doing that.</p> <p>17 Do I have that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. Yes, I mean, if you're talking about</p> <p>20 a formal meeting where we sit down and go</p> <p>21 through and approve it. I would say that was</p> <p>22 standard practice a decade – you know, early</p> <p>23 on. And as time went on that – that – that</p> <p>24 practice wasn't followed.</p> <p>25 Q. Okay.</p>
<p>Page 232</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. And, quite frankly, I don't even</p> <p>3 know if these were – these were sent to me</p> <p>4 even in any capacity.</p> <p>5 Q. What was the purpose of preparing</p> <p>6 the monthly reporting package – withdrawn.</p> <p>7 What was the purpose of preparing</p> <p>8 the monthly close package?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. The – the original purpose was so</p> <p>12 that it would just – it would be a report that</p> <p>13 was reviewed monthly with senior management.</p> <p>14 Q. Who was included in the idea of</p> <p>15 senior management?</p> <p>16 A. You know, I think originally when</p> <p>17 this was conceived that would have been like</p> <p>18 Jim Dondero and Mark Okada.</p> <p>19 Q. Were monthly reporting – withdrawn.</p> <p>20 Were monthly close packages prepared</p> <p>21 to the best of your knowledge until the time</p> <p>22 you left Highland?</p> <p>23 A. To my knowledge – I don't know,</p> <p>24 actually. I mean, to my knowledge, I believe</p> <p>25 it was being – that was still being done. I</p>	<p>Page 233</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know because, again, I wasn't reviewing</p> <p>3 them. I hadn't reviewed a close package for –</p> <p>4 for a long time. But I believe the standard</p> <p>5 practice that was still being carried out.</p> <p>6 Q. Did you ever have any discussions</p> <p>7 with the debtor's independent board concerning</p> <p>8 any promissory notes that were issued by any of</p> <p>9 the affiliates or Mr. Dondero?</p> <p>10 A. I can't – I can't – I can't recall</p> <p>11 specifically.</p> <p>12 Q. Did you speak with the independent</p> <p>13 board from time to time?</p> <p>14 A. Yes, from – from – from time to</p> <p>15 time I had discussions with the independent</p> <p>16 board members, you know, either – either, you</p> <p>17 know, by themselves or wholly, you know, as –</p> <p>18 as a – as a combined work.</p> <p>19 Q. Okay. Before we talk about</p> <p>20 Mr. Seery, do you recall ever having a</p> <p>21 conversation with Mr. Nelms or Mr. Dubel</p> <p>22 concerning any promissory note that was</p> <p>23 rendered by one of the affiliates or</p> <p>24 Mr. Dondero to Highland?</p> <p>25 A. I don't recall any conversations</p>



<p>Page 234</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically.</p> <p>3 Q. Do you know if the topic was ever</p> <p>4 discussed, even if you don't remember it</p> <p>5 specifically?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. It – it – it may have. I don't</p> <p>8 know. I don't recall.</p> <p>9 Q. Do you recall ever discussing any</p> <p>10 promissory note issued by any of the affiliates</p> <p>11 or Mr. Dondero with James Seery?</p> <p>12 A. I don't – I don't recall</p> <p>13 specifically.</p> <p>14 Q. Do you recall generally ever</p> <p>15 discussing the topic of promissory notes issued</p> <p>16 by any of the affiliates or Mr. Dondero to</p> <p>17 Highland with Mr. Seery?</p> <p>18 A. Nothing – nothing is really jumping</p> <p>19 out at me.</p> <p>20 Q. Do you recall if you ever told</p> <p>21 Mr. Seery that any of the affiliates or</p> <p>22 Mr. Dondero didn't have an obligation to pay</p> <p>23 all amounts due and owing under their notes?</p> <p>24 A. I don't recall having that</p> <p>25 conversation.</p>	<p>Page 235</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever tell Mr. Seery that you</p> <p>3 had any reason to believe that the amounts</p> <p>4 reflected in the notes issued by the affiliates</p> <p>5 and Mr. Dondero were invalid for any reason?</p> <p>6 A. I don't – I don't recall.</p> <p>7 Q. Did you tell Mr. Dondero – did you</p> <p>8 tell Mr. Seery that you thought the promissory</p> <p>9 notes issued by the advisors and Mr. Dondero</p> <p>10 that were outstanding as of the petition date</p> <p>11 were assets of the estate?</p> <p>12 A. I don't recall having a specific</p> <p>13 conversation about those – you know, those</p> <p>14 notes outstanding as – as of the petition date</p> <p>15 being assets on the estate. I mean, we put</p> <p>16 together – you know, they're in the books and</p> <p>17 records of the financial statements. I don't</p> <p>18 recall having a specific conversation.</p> <p>19 Q. Did you ever prepare any documents</p> <p>20 that were delivered to Mr. Seery that concerned</p> <p>21 the promissory notes issued by any of the</p> <p>22 affiliates or Mr. Dondero?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. Did I produce any that concerned –</p> <p>25 you mean did I just – did I give Mr. Seery</p>
<p>Page 236</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 anything that – that said I have concerns over</p> <p>3 these notes?</p> <p>4 Q. No. Let me try again. Maybe it was</p> <p>5 my question.</p> <p>6 Did you ever give Mr. Seery any</p> <p>7 information concerning any of the notes that</p> <p>8 were issued by any of the affiliates or</p> <p>9 Mr. Dondero?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall if I did or not. I</p> <p>12 don't – I don't remember. I mean, you have my</p> <p>13 emails. You may have asked. Again, I don't –</p> <p>14 I don't know.</p> <p>15 MR. MORRIS: Can we put up the</p> <p>16 document that has been premarked as Exhibit</p> <p>17 39?</p> <p>18 MS. DANDENEAU: John, that is this</p> <p>19 document, isn't it?</p> <p>20 MR. MORRIS: Oh, yeah, it might be,</p> <p>21 as a matter of fact. Let's go to Number</p> <p>22 40.</p> <p>23 (Exhibit 40 marked.)</p> <p>24 Q. During the bankruptcy,</p> <p>25 Mr. Waterhouse, did you prepare documents that</p>	<p>Page 237</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were filed with the bankruptcy court?</p> <p>3 A. I didn't – I didn't prepare them</p> <p>4 personally.</p> <p>5 Q. Did people prepare them under your</p> <p>6 direction?</p> <p>7 A. Yes. There were members of the team</p> <p>8 that prepared them, and they worked in – you</p> <p>9 know, there were members of DSI that were</p> <p>10 involved in the process as well.</p> <p>11 Q. To the best of your knowledge, did</p> <p>12 DSI rely on the employees of Highland for the</p> <p>13 information that they used to prepare the</p> <p>14 bankruptcy filings?</p> <p>15 A. Yes. The books and records were</p> <p>16 with the Highland personnel.</p> <p>17 Q. Okay. And do you see on the screen</p> <p>18 here, there is a document that we have marked</p> <p>19 as Exhibit 40 that is – that is titled Summary</p> <p>20 of Assets and Liabilities?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. And do you recall reviewing</p> <p>23 any summary of assets and liabilities before it</p> <p>24 was filed with the bankruptcy court?</p> <p>25 A. Yes, I recall reviewing this at a</p>

<p>Page 238</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 high level.</p> <p>3 Q. And did you believe that it was</p> <p>4 accurate at the time it was filed?</p> <p>5 A. I didn't have any other reason to</p> <p>6 believe otherwise.</p> <p>7 Q. Okay. Do you see that the total</p> <p>8 value of all properties listed in Part 1 is</p> <p>9 approximately \$410 million?</p> <p>10 MS. DEITSCH-PEREZ: Objection to</p> <p>11 form.</p> <p>12 A. Yes, it is in 1c.</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. If we go to the second page,</p> <p>16 now I think I may just have excerpts here, just</p> <p>17 so everybody is clear, but if we scroll down to</p> <p>18 the second page, you will see that there is</p> <p>19 a – a little further. There you go. You will</p> <p>20 see there is a reference to Item 71, notes</p> <p>21 receivable.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And that was a reference to the</p> <p>25 notes receivable from the affiliates and</p>	<p>Page 239</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, among others; is that right?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. Yes. The affiliate notes and the</p> <p>5 Dondero notes were in this amount, but they</p> <p>6 weren't – again, like you said, and among</p> <p>7 others.</p> <p>8 Q. Okay. We will look at the</p> <p>9 specificity because I'm not playing gaming</p> <p>10 here, but do you know if the \$150 million of</p> <p>11 notes receivable was included within the</p> <p>12 \$410 million of total value of the debtor's</p> <p>13 assets?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I – I – I believe so.</p> <p>16 Q. Right. And so is it fair to say</p> <p>17 that as of the date this document was prepared,</p> <p>18 the notes receivable were more than one-third</p> <p>19 of the value of the debtor's assets?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. Again, if you are just taking the</p> <p>24 math, 150 divided by whatever the \$400 million</p> <p>25 number is above, then yes, you get there.</p>
<p>Page 240</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. You know, but as of the time of this</p> <p>4 filing, that is what was put in this filing,</p> <p>5 right, but, you know, I mean, numbers –</p> <p>6 numbers change, facts and circumstances change.</p> <p>7 Q. But as the CFO of Highland, the</p> <p>8 debtor in bankruptcy, did you believe that this</p> <p>9 number accurately reflected the total amount</p> <p>10 due under the notes receivable?</p> <p>11 A. That is what we had in our books and</p> <p>12 records.</p> <p>13 Q. Okay. And did you believe as the</p> <p>14 CFO that the books and records accurately</p> <p>15 reported the then value of the debtor's assets?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. We didn't – as part of this filing,</p> <p>18 there was no fair value measurement or</p> <p>19 anything. These were just accounting entries</p> <p>20 for the promissory notes. There is no analysis</p> <p>21 for impairment or fair market value adjustments</p> <p>22 or anything of that nature. This is purely</p> <p>23 taking numbers and putting them in our form.</p> <p>24 Q. Did you do any impairment analysis</p> <p>25 at any time while you were employed by</p>	<p>Page 241</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland?</p> <p>3 A. Yes, we did do impairment analysis</p> <p>4 on – on assets.</p> <p>5 Q. Okay. Did you ever do an impairment</p> <p>6 analysis on any of the promissory notes that</p> <p>7 were given to Highland by any of the affiliates</p> <p>8 or Mr. Dondero?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Under what circumstances do you</p> <p>11 prepare impairment analyses?</p> <p>12 A. As – as – if you're preparing</p> <p>13 financials in accordance with GAAP, generally</p> <p>14 accepted accounting principles, if you're</p> <p>15 preparing full GAAP financials, you should be</p> <p>16 preparing – you should be undergoing on a</p> <p>17 periodic basis any fair market value</p> <p>18 adjustments to assets.</p> <p>19 As I was instructed at the time of</p> <p>20 the petition date, we weren't producing GAAP</p> <p>21 financials. So this wasn't something I was</p> <p>22 worried about nor concerned about.</p> <p>23 Q. Okay. Were NexPoint and HCMFA and</p> <p>24 Highland's audited financial statements</p> <p>25 prepared in accordance with GAAP?</p>

<p>Page 242</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The audited financials – yes,</p> <p>3 audited financial statements are prepared in</p> <p>4 accordance with GAAP.</p> <p>5 Q. Do you recall whether any of</p> <p>6 Highland or HCMFA or NexPoint ever made a fair</p> <p>7 market value adjustment to any of the notes</p> <p>8 issued by any of the affiliates or Mr. Dondero</p> <p>9 to Highland?</p> <p>10 A. I do not recall that happening, but</p> <p>11 the – it is because under – under GAAP,</p> <p>12 the – the treatment of liabilities is</p> <p>13 different than assets.</p> <p>14 Q. Okay. So then let's just focus on</p> <p>15 Highland's audited financial statements.</p> <p>16 The last audited financial</p> <p>17 statements were for the period ending December</p> <p>18 31st, 2018; correct?</p> <p>19 A. That is my understanding.</p> <p>20 Q. And you had – you had an obligation</p> <p>21 to disclose anything to PricewaterhouseCoopers</p> <p>22 concerning any subsequent events between the</p> <p>23 end of 2018 and June 3rd, 2019; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 MS. DEITSCH-PEREZ: Form.</p>	<p>Page 243</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Correct.</p> <p>3 Q. Okay. To the best of your</p> <p>4 knowledge, as Highland's CFO, did Highland ever</p> <p>5 make any fair market value adjustments to any</p> <p>6 of the promissory notes that were carried on</p> <p>7 its balance sheet and that were issued by any</p> <p>8 of the affiliates or Mr. Dondero?</p> <p>9 A. I think I answered that question</p> <p>10 earlier. I don't recall doing that for any of</p> <p>11 the – those – those notes. So it would have</p> <p>12 included the audit for the – for the 2018</p> <p>13 period.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Can we go to the next</p> <p>16 page.</p> <p>17 Q. Do you see this is a note a list of</p> <p>18 notes receivable? Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And do you see that this ties into</p> <p>21 the page that we were just looking?</p> <p>22 A. I'm sorry, can we go back to the</p> <p>23 prior page? I mean, it was at 150,331,222. It</p> <p>24 was on the prior page. Next page. Yes, it</p> <p>25 agrees.</p>
<p>Page 244</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. So now let's look at that</p> <p>3 schedule. So this was the face amount of all</p> <p>4 of the promissory notes that Highland held at</p> <p>5 the time this document was filed with the</p> <p>6 bankruptcy court; right?</p> <p>7 A. Yes.</p> <p>8 Q. There is a footnote there that says,</p> <p>9 doubtful or uncollectible accounts are</p> <p>10 evaluated at year-end.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And is it fair to say that as</p> <p>14 of the year-end 2018, the year before this,</p> <p>15 that to the extent any of these notes were</p> <p>16 outstanding at that time, they weren't deemed</p> <p>17 to be doubtful or uncollectible?</p> <p>18 A. Yeah. For the 2018 audit, there</p> <p>19 weren't any – there weren't any adjustments to</p> <p>20 fair value.</p> <p>21 Q. Okay. And during the bankruptcy, do</p> <p>22 you recall that Highland subsequently reserved</p> <p>23 for the Hunter Mountain Investment Trust note?</p> <p>24 A. Yes.</p> <p>25 Q. Why did Highland – were you</p>	<p>Page 245</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 involved in the decision to reserve the Hunter</p> <p>3 Mountain Investment Trust note?</p> <p>4 A. I was not.</p> <p>5 Q. Do you know why Highland decided to</p> <p>6 reserve for the Hunter Mountain Investment</p> <p>7 Trust note?</p> <p>8 A. I don't know yet decision was made.</p> <p>9 I believe it was made by someone at DSI.</p> <p>10 Q. Okay. I'm just asking if you know</p> <p>11 why.</p> <p>12 Did you ever ask anyone why they</p> <p>13 reserved for that particular note?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know whether the debtor</p> <p>16 reserved for any other note on this list during</p> <p>17 the bankruptcy?</p> <p>18 A. Again, I don't recall. I wasn't</p> <p>19 part of any process of – again, like any fair</p> <p>20 value adjustments or anything to that degree.</p> <p>21 Like I said, a lot of that was done by DSI and</p> <p>22 it was kind of out of our court.</p> <p>23 Q. Okay. Do you know if any note</p> <p>24 receivable on this list was ever deemed by the</p> <p>25 debtor to be doubtful or uncollectible?</p>

<p>Page 246</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't – I don't have a</p> <p>3 recollection of every filing, so I don't know.</p> <p>4 Q. Did you ever have a discussion with</p> <p>5 anybody at any time about whether any of the</p> <p>6 notes receivable on this list should be deemed</p> <p>7 to be doubtful or uncollectible?</p> <p>8 A. No. As I previously stated, we were</p> <p>9 told we didn't have to keep GAAP financials.</p> <p>10 We weren't having – you know, there is no</p> <p>11 underlying audits being performed, so I mean,</p> <p>12 it wasn't something I worried about.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 Q. Did you ever have a conversation</p> <p>15 with anybody about any of the notes receivable</p> <p>16 and whether they should be deemed to be</p> <p>17 doubtful or uncollectible? Did you have the</p> <p>18 conversation, yes or no?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you recall ever telling anybody</p> <p>22 that you believed any of the notes receivable</p> <p>23 on this list should be doubtful – should be</p> <p>24 deemed to be doubtful or uncollectible?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 247</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall. I mean, it may have</p> <p>3 happened, you know, again, when we initially</p> <p>4 getting DSI up to speed and going through</p> <p>5 financials, it may have happened, but I don't</p> <p>6 recall specifically.</p> <p>7 Q. While you were the CFO of Highland</p> <p>8 during the time that the company was in</p> <p>9 bankruptcy, did you have any reason to believe</p> <p>10 that any of the notes receivable on this list</p> <p>11 other than Hunter Mountain Investment Trust</p> <p>12 should have been characterized as doubtful or</p> <p>13 uncollectible?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Form.</p> <p>16 A. I didn't know. I didn't form an</p> <p>17 opinion. Bankruptcy was new to me. It still</p> <p>18 is new to me, even after going through this.</p> <p>19 So I really didn't know what to expect nor</p> <p>20 really – you know, I didn't know.</p> <p>21 MR. MORRIS: I move to strike.</p> <p>22 Q. During the period of Highland's</p> <p>23 bankruptcy when you were serving as CFO, did</p> <p>24 you have any reason to believe any of the notes</p> <p>25 on this list were doubtful or uncollectible?</p>
<p>Page 248</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DEITSCH-PEREZ: This is like the</p> <p>3 fifth time you've asked it. Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: I'm moving to strike,</p> <p>6 if you haven't noticed, because he's not</p> <p>7 answering the question.</p> <p>8 MS. DEITSCH-PEREZ: He was answering</p> <p>9 the question, you just didn't like it, like</p> <p>10 the answer.</p> <p>11 MR. MORRIS: Good Lord.</p> <p>12 Q. Go ahead, Mr. Waterhouse.</p> <p>13 A. Again, I don't – we brought up a</p> <p>14 myriad of issues at the start of the bankruptcy</p> <p>15 case. I don't recall if this was one of them,</p> <p>16 but, again, there are a lot of things we</p> <p>17 couldn't change. Even, you know, I was told</p> <p>18 status quo, blah, blah, blah, right, there is a</p> <p>19 stay, you can't – you know, I don't recall</p> <p>20 specifically, but that doesn't mean it didn't</p> <p>21 happen.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. During the time that Highland was in</p> <p>24 bankruptcy and you served as CFO, did you have</p> <p>25 any reason to believe that any of the notes</p>	<p>Page 249</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 receivable on this list were doubtful or</p> <p>3 uncollectible?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Potentially.</p> <p>7 Q. Did you ever tell anybody that?</p> <p>8 A. As I just stated like five times,</p> <p>9 yes, we – at the beginning after filing and we</p> <p>10 were getting DSI and others up to speed, you</p> <p>11 know, we had a myriad of discussions of a lot</p> <p>12 of things and this was likely one of them. I</p> <p>13 don't – but I don't recall specifically we</p> <p>14 talked –</p> <p>15 Q. I don't want to know – I don't want</p> <p>16 to know what was –</p> <p>17 MS. DEITSCH-PEREZ: Wait, wait.</p> <p>18 Excuse me. Mr. Morris, you did not let him</p> <p>19 finish his answer.</p> <p>20 A. I spoke – we had – we were</p> <p>21 bringing Fred Karesa and Brad Sharp (phonetic)</p> <p>22 up to speed on all of these items, contracts,</p> <p>23 and investments and going through – we had</p> <p>24 hours and hours and hours of discussion. And</p> <p>25 then not only do I have to repeat this not</p>

<p>Page 250</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 once, twice, three, four times with – you</p> <p>3 know, I mean, we – I don't – I don't remember</p> <p>4 the sum culmination of all these discussions.</p> <p>5 They all kind of blend together.</p> <p>6 MR. MORRIS: Okay. I move to strike</p> <p>7 and I will try one more time.</p> <p>8 Q. Did you ever tell anybody at DSI</p> <p>9 that you believed any of the notes receivable</p> <p>10 on this list were doubtful or uncollectible?</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 A. Potentially.</p> <p>13 Q. Potentially you told them or</p> <p>14 potentially they were doubtful or</p> <p>15 uncollectible?</p> <p>16 A. Potentially I told them that we</p> <p>17 needed to look at the value of these – of</p> <p>18 these assets.</p> <p>19 Q. Okay. Did you – okay. It is</p> <p>20 potential that you told them and it is</p> <p>21 potentially that you didn't; right?</p> <p>22 MS. DANDENEAU: Objection to form.</p> <p>23 A. I've gone through that. I don't</p> <p>24 recall specifically.</p> <p>25 Q. So you should just – I don't want</p>	<p>Page 251</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to tell what you to do. Do you have –</p> <p>3 MS. DANDENEAU: Good.</p> <p>4 Q. Other than – other than telling</p> <p>5 them that they should look at the values, do</p> <p>6 you have any recollection whatsoever of ever</p> <p>7 having told anybody at DSI that any of the</p> <p>8 notes receivable on this page were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. I recall having general discussions</p> <p>14 about everything on our balance sheet which</p> <p>15 would have included these – these notes</p> <p>16 receivable.</p> <p>17 Q. Okay.</p> <p>18 A. I don't recall specifically where</p> <p>19 those discussions delved into.</p> <p>20 Q. Do you recall any discussion at all</p> <p>21 on the topic of whether any of these notes on</p> <p>22 this list were doubtful or uncollectible?</p> <p>23 MR. AIGEN: Mr. Morris, how on earth</p> <p>24 is that question different from the</p> <p>25 question that you just asked for the last</p>
<p>Page 252</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 five times? I mean, really I thought you</p> <p>3 were – (overspeak.)</p> <p>4 MR. MORRIS: Because he never</p> <p>5 answered it.</p> <p>6 MS. DEITSCH-PEREZ: Are you</p> <p>7 listening to him?</p> <p>8 MR. MORRIS: You know –</p> <p>9 MS. DEITSCH-PEREZ: He basically</p> <p>10 said that he had a conversation with DSI</p> <p>11 that went over all of this stuff and that</p> <p>12 conversation could have included the notes</p> <p>13 but he doesn't recall specifically.</p> <p>14 What more do you want him – to ask</p> <p>15 of him?</p> <p>16 MR. MORRIS: I want him – I would</p> <p>17 love him to say – I would like him to</p> <p>18 testify to the truth, and that is he has no</p> <p>19 recollection.</p> <p>20 MS. DEITSCH-PEREZ: Well, the truth</p> <p>21 as you would like to see it, but – but he</p> <p>22 is testifying truthfully. And I – and, by</p> <p>23 the way, I move to strike that comment –</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: – because it</p>	<p>Page 253</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 suggests that he has not testified</p> <p>3 truthfully.</p> <p>4 MR. MORRIS: I will ask my question</p> <p>5 again. And if at any time you want to</p> <p>6 direct him not to answer, that is your</p> <p>7 prerogative.</p> <p>8 Q. Mr. Waterhouse, do you have any</p> <p>9 recollection at all of ever telling anybody</p> <p>10 from DSI that any of these notes were doubtful</p> <p>11 or uncollectible?</p> <p>12 MS. DANDENEAU: Object to form.</p> <p>13 A. I don't remember specifically.</p> <p>14 Q. Do you remember generally that</p> <p>15 specific topic?</p> <p>16 A. We generally talked about assets,</p> <p>17 values. If – we had discussions of that and</p> <p>18 collectability in nature. I mean, of Highland,</p> <p>19 the funds, the CLOs, the entire complex. We</p> <p>20 had discussions like that, which is, you know,</p> <p>21 as you look at a billion dollar consolidated</p> <p>22 balance sheet.</p> <p>23 So I generally remember – this is</p> <p>24 billions of dollars, including these assets –</p> <p>25 having discussions of this – of this type.</p>



<p>Page 254</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you believe that an affiliate</p> <p>3 loan on this list was doubtful or</p> <p>4 uncollectible? Would you have told that to</p> <p>5 DSI?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Objection to form.</p> <p>8 A. If we had, like – again, if we –</p> <p>9 if – if we weren't preparing financial</p> <p>10 statements in accordance with GAAP, and – you</p> <p>11 know, if DSI at that point – they were –</p> <p>12 again, I was new to bankruptcy.</p> <p>13 The CRO is – we are delegating</p> <p>14 everything to the CRO. All the decisionmaking.</p> <p>15 Remember – remember when you and I went into</p> <p>16 Delaware Court and we were saying DSI basically</p> <p>17 does everything, remember this, Mr. Morris?</p> <p>18 You were my counsel at the time, and</p> <p>19 basically we're running everything through DSI.</p> <p>20 That was what this was like in the early part.</p> <p>21 Everything was communicated through</p> <p>22 DSI. So DSI says this. DSI says that. That</p> <p>23 is what we're doing, and we're pointing out</p> <p>24 things to them.</p> <p>25 Now, they decide what direction this</p>	<p>Page 255</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 goes.</p> <p>3 Q. Did you point out that any of</p> <p>4 these –</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Okay. At any time that you served</p> <p>7 as Highland's CFO, did you ever point out to</p> <p>8 DSI that any of these loans were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Objection to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. If you're asking me if I had a</p> <p>14 conversation with DSI, if any of these loans</p> <p>15 were doubtful or uncollectible, I don't recall</p> <p>16 specifically.</p> <p>17 Q. Do you recall that the debtor filed</p> <p>18 on the docket monthly operating reports?</p> <p>19 A. Yes.</p> <p>20 Q. You prepared those personally,</p> <p>21 didn't you?</p> <p>22 MS. DEITSCH-PEREZ: Objection to</p> <p>23 form.</p> <p>24 A. I didn't personally prepare them,</p> <p>25 the team did with DSI.</p>
<p>Page 256</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. But you signed them; correct?</p> <p>3 A. My signature is on the MORs.</p> <p>4 Q. And you signed them as the preparer</p> <p>5 of the document; correct?</p> <p>6 A. Yes, I did this pursuant to DSI's</p> <p>7 instructions.</p> <p>8 Q. Okay. You wouldn't have signed the</p> <p>9 document if you didn't believe it to be</p> <p>10 accurate; correct?</p> <p>11 A. If I had reason to believe it</p> <p>12 wasn't, presumably I wouldn't have signed it.</p> <p>13 Q. Okay. And do you have any reason to</p> <p>14 believe right now that any monthly operating</p> <p>15 report that has your signature on it was</p> <p>16 inaccurate in any way?</p> <p>17 MS. DEITSCH-PEREZ: Objection to the</p> <p>18 form.</p> <p>19 A. My understanding of the monthly</p> <p>20 operating reports is we were filing them in</p> <p>21 accordance with the standards set by the Court.</p> <p>22 It wasn't – you know, again, I don't – you</p> <p>23 know, it wasn't GAAP. It wasn't these other</p> <p>24 standards, so I testified I didn't have</p> <p>25 experience in this. The CRO was running the</p>	<p>Page 257</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 show. I followed their advice.</p> <p>3 Q. But you assured yourself that</p> <p>4 everything in the report was accurate before</p> <p>5 you signed them; correct?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I trusted the guidance from the CRO</p> <p>8 and their team and their experience and their</p> <p>9 guidance for doing this for many, many, many</p> <p>10 years to – to – to categorize and put things</p> <p>11 in ways on the form.</p> <p>12 You know, my team had – had not</p> <p>13 filled out these forms before and needed all of</p> <p>14 this guidance. I'm not an expert in this. I</p> <p>15 have oversight of it. I signed the form. DSI</p> <p>16 told me to.</p> <p>17 Q. And you and your team are the source</p> <p>18 of the information that DSI used to create the</p> <p>19 reports; correct?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. The books and records reside with</p> <p>22 the – with – with the corporate accounting</p> <p>23 team.</p> <p>24 Q. Okay. And the corporate accounting</p> <p>25 team was the corporate accounting team that was</p>

<p style="text-align: right;">Page 258</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under your direction; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So -- so your team was responsible</p> <p>5 for maintaining Highland's books and records;</p> <p>6 correct?</p> <p>7 A. I'm sorry, my team was responsible?</p> <p>8 Q. Correct.</p> <p>9 A. Yes. They -- they -- they were</p> <p>10 the -- the -- the general ledger of Highland,</p> <p>11 that responsibility was with the corporate</p> <p>12 accounting team.</p> <p>13 Q. The corporate accounting group</p> <p>14 reported to you; correct?</p> <p>15 A. Yes.</p> <p>16 MR. MORRIS: Can we put up 41,</p> <p>17 please.</p> <p>18 (Exhibit 41 marked.)</p> <p>19 Q. All right. You will see that this</p> <p>20 is a report that is dated January 31st, 2020,</p> <p>21 but it is for the month ending December 2019.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And you signed this report in your</p> <p>25 capacity as the chief financial officer of</p>	<p style="text-align: right;">Page 259</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you're the preparer -- you're</p> <p>5 identified as the preparer of the report;</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Do you recall participating in the</p> <p>9 preparation of monthly operating reports?</p> <p>10 A. As I testified earlier, it was put</p> <p>11 together, you know, with the team. The team</p> <p>12 worked with DSI to put these monthly operating</p> <p>13 reports together. We had no experience at this</p> <p>14 time of the monthly operating reports or things</p> <p>15 of this nature.</p> <p>16 MR. MORRIS: Can you turn to the</p> <p>17 next page, please.</p> <p>18 Q. Do you see a line item under assets</p> <p>19 due from affiliates?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. And to the best of your</p> <p>22 knowledge and understanding, as the person who</p> <p>23 is identified as the preparer of this report,</p> <p>24 does that line item include the affiliate loans</p> <p>25 that we've been talking about?</p>
<p style="text-align: right;">Page 260</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I would have to see, just</p> <p>3 like we did with the financial statements of</p> <p>4 Highland and NexPoint, I would have to see a</p> <p>5 detailed build, but, you know, if you look at</p> <p>6 the other line items, you know, the only other</p> <p>7 place it could be would be in -- in other</p> <p>8 assets.</p> <p>9 Q. Okay. And as a matter of</p> <p>10 arithmetic, is it fair to say that is the value</p> <p>11 of the assets due from affiliates was more than</p> <p>12 25 percent of the value of Highland's total</p> <p>13 assets as of 12/31/2019?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I'm really not doing the mental math</p> <p>16 right now, so I've been going at this depo for</p> <p>17 hours, so I'm really not -- you know --</p> <p>18 Q. All right. No problem.</p> <p>19 A. -- these are millions of dollars.</p> <p>20 Q. Let's look at the Footnote 1,</p> <p>21 please. Do you see there is a reference to the</p> <p>22 Hunter Mountain note?</p> <p>23 A. Yes, I see that in Footnote 1.</p> <p>24 Q. Okay. And that's the reserve that</p> <p>25 was taken against that note?</p>	<p style="text-align: right;">Page 261</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, that is what this indicates.</p> <p>3 Q. Okay. And were you aware that the</p> <p>4 reserve was being taken on that it was?</p> <p>5 A. I was -- I was aware, yeah, at some</p> <p>6 point, yes.</p> <p>7 Q. Okay. And are you aware of any</p> <p>8 reserve being taken with respect to any other</p> <p>9 note that was issued in favor of Highland?</p> <p>10 A. Again, as I testified, we didn't go</p> <p>11 through an analysis on -- on -- on the other</p> <p>12 notes.</p> <p>13 Q. Can we turn --</p> <p>14 A. I believe -- I believe it says that</p> <p>15 in Footnote 1, fair value has not been</p> <p>16 determined with respect to any of the notes.</p> <p>17 So this footnote -- footnotes, look,</p> <p>18 there has been no determination.</p> <p>19 Q. Okay. The determination was made in</p> <p>20 the audited financial statements just six</p> <p>21 months earlier; right? We saw that earlier?</p> <p>22 A. That was as of 12/31/18. I mean,</p> <p>23 things -- circumstances -- there's a bank --</p> <p>24 circumstances change, things change -- things</p> <p>25 change over time, you know, facts and</p>

<p>Page 262</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 circumstances change. Again, you have to do an</p> <p>3 analysis.</p> <p>4 Q. Okay. And you do recall that in</p> <p>5 Highland's 2018 financial statement, all of the</p> <p>6 notes issued by affiliates and Mr. Dondero that</p> <p>7 were due at year-end had a fair value equal to</p> <p>8 the carrying value; correct? We looked at</p> <p>9 that?</p> <p>10 A. Yes. That was in the – in the</p> <p>11 disclosure for the – for the affiliate notes,</p> <p>12 yes.</p> <p>13 Q. And – and you were obligated to</p> <p>14 share with PwC any subsequent events between</p> <p>15 the end of 2018 and the date that you signed</p> <p>16 your management representation letter on June</p> <p>17 3rd, 2019; correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yes. I – I – I signed the</p> <p>21 management, you know, my signature is in the</p> <p>22 management representation letter – I hope I'm</p> <p>23 answering your question – that is dated in</p> <p>24 June with the representations made in that</p> <p>25 management representation letter.</p>	<p>Page 263</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And there was nothing that</p> <p>3 caused PricewaterhouseCoopers to include in</p> <p>4 subsequent events any adjustment to the</p> <p>5 conclusion that the fair value of the affiliate</p> <p>6 notes and the notes issued by Mr. Dondero</p> <p>7 equaled the carrying value; correct?</p> <p>8 MS. DANDENEAU: Objection to the</p> <p>9 form.</p> <p>10 A. That is correct. That is what was</p> <p>11 in the – in the – in the footnotes.</p> <p>12 Q. Okay. So are you aware of anything</p> <p>13 that occurred between June 3rd, 2019 and</p> <p>14 December 31st, 2019 that would have caused the</p> <p>15 fair value of the notes to differ from the</p> <p>16 carrying value?</p> <p>17 A. Yeah. Highland filed for</p> <p>18 bankruptcy, things changed – I mean, there was</p> <p>19 a bankruptcy filed in October of – of – of</p> <p>20 2019, right, the petition date that we've</p> <p>21 described earlier.</p> <p>22 I mean, I had a – I guess looking</p> <p>23 back naively, I thought we were going to get an</p> <p>24 audit from PwC for year-ended 2019, and when we</p> <p>25 had discussions with PwC, they were like, are</p>
<p>Page 264</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you crazy, we're not auditing this. Values</p> <p>3 change, all these things change, bankruptcy</p> <p>4 changes the entire scenario. I mean – and</p> <p>5 they're like, we're not – we're not touching</p> <p>6 this.</p> <p>7 And so, you know, I was like, okay,</p> <p>8 sorry, I get it, okay, no an audit.</p> <p>9 I mean, it is – you know, and –</p> <p>10 you know, and we weren't preparing GAAP</p> <p>11 financial statements.</p> <p>12 Again, I didn't know what we were</p> <p>13 doing in relation to our financial statements,</p> <p>14 but these were the discussions I was having at</p> <p>15 the time. And yeah, I mean, filing bankruptcy</p> <p>16 from what I got from outside auditors and</p> <p>17 others involved changed things dramatically.</p> <p>18 Q. Okay. Highland wasn't the obligor</p> <p>19 under any of the notes that we're talking</p> <p>20 about; correct?</p> <p>21 A. No.</p> <p>22 Q. So –</p> <p>23 A. That's right.</p> <p>24 Q. So can you identify any fact that</p> <p>25 would cause the fair value to deviate from the</p>	<p>Page 265</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 carrying value during the seven-month period</p> <p>3 between June 3rd and the end of the year, 2019?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. No. I mean, I'm putting myself back</p> <p>6 at that time, right. Hindsight is 2020, but we</p> <p>7 didn't do an analysis, but we would have done a</p> <p>8 fulsome analysis and looked at all of the facts</p> <p>9 and circumstances at the time, but asset values</p> <p>10 change. You know, there could have been a</p> <p>11 market crash in hindsight in 2020, which –</p> <p>12 which affected entities' abilities.</p> <p>13 There could have been all of these</p> <p>14 things, right, that – that happen. It is –</p> <p>15 it is easy to look back in hindsight, but when</p> <p>16 you are looking at this in – in realtime, the</p> <p>17 analysis is different, and again, we didn't do</p> <p>18 an analysis.</p> <p>19 Q. Okay. You didn't do an analysis.</p> <p>20 Do I have that right?</p> <p>21 A. I don't – I don't recall doing one</p> <p>22 or maybe – you know, I don't recall doing one.</p> <p>23 MR. MORRIS: Okay. I'm going to</p> <p>24 take a break. I may be done, so the time</p> <p>25 now is – is 4:30 your time. Let's just</p>

<p style="text-align: right;">Page 266</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 take a short break until 4:40 your time.</p> <p>3 MS. DANDENEAU: Okay.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record, 4:31 p.m.</p> <p>6 (Recess taken 4:31 p.m. to 4:43 p.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 4:43 p.m.</p> <p>9 MR. MORRIS: I have no further</p> <p>10 questions.</p> <p>11 MR. RUKAVINA: Okay.</p> <p>12 Mr. Waterhouse, I will go next.</p> <p>13 EXAMINATION</p> <p>14 BY MR. RUKAVINA:</p> <p>15 Q. Sir, my name is Davor Rukavina. I'm</p> <p>16 the lawyer for –</p> <p>17 MR. MORRIS: Hey, Davor, just before</p> <p>18 you begin, I just want to put on the record</p> <p>19 Highland's objection to documents that were</p> <p>20 produced to me 10 minutes before the</p> <p>21 deposition began.</p> <p>22 MR. RUKAVINA: What the basis of</p> <p>23 your objection?</p> <p>24 MR. MORRIS: That they were due</p> <p>25 quite some time ago, and the fact that you</p>	<p style="text-align: right;">Page 267</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 had – I just think it's appropriate to –</p> <p>3 to dump documents on somebody 10 minutes</p> <p>4 before the deposition. I just think</p> <p>5 that's –</p> <p>6 MR. RUKAVINA: Well, these are</p> <p>7 documents Highland produced. I'm not aware</p> <p>8 of any rule I have to give you advance</p> <p>9 documents when I know for the record that</p> <p>10 other than the exhibits that you sent to us</p> <p>11 last week, most of the exhibits you used</p> <p>12 today you did not provide to me prior to</p> <p>13 this deposition.</p> <p>14 MR. MORRIS: No, but the documents</p> <p>15 were produced by me in – in litigation,</p> <p>16 right?</p> <p>17 MR. RUKAVINA: I'm going to use</p> <p>18 primarily, John, the documents that you</p> <p>19 produced to me today, but you may.</p> <p>20 MR. MORRIS: Primarily. I've got –</p> <p>21 I've got my objection. You have got your</p> <p>22 response. Proceed.</p> <p>23 Q. Mr. Waterhouse, again, I represent</p> <p>24 the advisors, HCMFA and NexPoint Advisors.</p> <p>25 Do you understand that?</p>
<p style="text-align: right;">Page 268</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. You and I have never met or talked</p> <p>4 before today, have we?</p> <p>5 A. No, I have – I have heard your</p> <p>6 voice on calls before.</p> <p>7 Q. Okay.</p> <p>8 MR. RUKAVINA: Madam Court Reporter,</p> <p>9 I will use a few exhibits today. My</p> <p>10 associate, Mr. Nguyen, will find some way</p> <p>11 to get them to you. I don't know how to do</p> <p>12 that, but it looks like you guys do.</p> <p>13 I am going to use numbers as well.</p> <p>14 But to differentiate them from Mr. Morris</p> <p>15 we're going to mark mine with the prefix A</p> <p>16 for advisors.</p> <p>17 Do you understand?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 MR. RUKAVINA: Okay. Perfect.</p> <p>20 Q. Okay. So, Mr. Waterhouse, let's</p> <p>21 start with those two HCMFA notes that you were</p> <p>22 asked about, one for 5 million and one for</p> <p>23 2.4 million.</p> <p>24 Do you recall those notes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 269</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Were you ever the CFO of HCMFA?</p> <p>3 A. I don't recall.</p> <p>4 Q. So to the best of your recollection,</p> <p>5 you were still an officer of HCMFA in 2019,</p> <p>6 just that your title was treasurer?</p> <p>7 MR. MORRIS: Object to the form of</p> <p>8 the question. There is no leading here.</p> <p>9 He works for your client.</p> <p>10 MS. DANDENEAU: That is not – that</p> <p>11 is not true.</p> <p>12 MR. MORRIS: He's the treasurer –</p> <p>13 he is the treasurer of your client. I</p> <p>14 don't – I'm going to object every time you</p> <p>15 try to lead, so...</p> <p>16 MR. RUKAVINA: Totally fine to</p> <p>17 object.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 Q. Please answer my question,</p> <p>20 Mr. Waterhouse.</p> <p>21 A. I'm sorry, could you repeat? There</p> <p>22 was...</p> <p>23 Q. Yes. You were – you testified</p> <p>24 earlier that in 2019 you were an officer of</p> <p>25 HCMFA; correct?</p>

<p>Page 270</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I testified that I was the</p> <p>3 treasurer and I didn't know if that incumbency</p> <p>4 certificate, you know, was one that appointed</p> <p>5 me as a treasurer, but yes.</p> <p>6 Q. I'm just trying to confirm that</p> <p>7 sitting here today, to the best of your</p> <p>8 recollection, at that time you were – your</p> <p>9 title was treasurer. It was not chief</p> <p>10 financial officer.</p> <p>11 A. I don't recall that being my title.</p> <p>12 Q. Okay. And in May of 2019, however,</p> <p>13 I think you testified you were the chief</p> <p>14 financial officer of the debtor; correct?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes, I was – yes.</p> <p>18 Q. Okay. As such, in May of 2019, did</p> <p>19 you have the authority, to your understanding,</p> <p>20 to unilaterally loan \$5 million or \$2.4 million</p> <p>21 to anyone on behalf of the debtor?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Sorry, can you repeat that?</p> <p>25 Q. Yes. So in your capacity as the</p>	<p>Page 271</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 chief financial officer of the debtor, Highland</p> <p>3 Capital Management, L.P., in May of 2019, did</p> <p>4 you believe that you unilaterally, just Frank</p> <p>5 Waterhouse, had the authority to loan on behalf</p> <p>6 of the debtor to anyone \$5 million and</p> <p>7 \$2.4 million?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. No.</p> <p>11 Q. Is it because loans of that amount</p> <p>12 would have had to be approved by someone else?</p> <p>13 A. Yes.</p> <p>14 Q. Who in '20 – in May of 2019, if</p> <p>15 Highland wanted to loan 5 million or</p> <p>16 \$2.4 million to someone, what would have been</p> <p>17 the internal approval procedure?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. If – if we had loans of that nature</p> <p>21 that needed to be made due to their size, we</p> <p>22 would have gotten approval from the – the</p> <p>23 president of Highland.</p> <p>24 Q. And who that was individual?</p> <p>25 A. It was James Dondero.</p>
<p>Page 272</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Now, I'm going to ask you a</p> <p>3 similar question but for a different entity.</p> <p>4 In May of 2019, as the treasurer of</p> <p>5 HCMFA, did you believe that you unilaterally</p> <p>6 had the ability to cause HCMFA to become the</p> <p>7 borrower of a \$5 million loan and a</p> <p>8 \$2.4 million loan?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. No.</p> <p>12 Q. What would – what would the</p> <p>13 approval have taken place – strike that.</p> <p>14 What would the approval process have</p> <p>15 been like in May of 2019 at HCMFA for HCMFA to</p> <p>16 take out a \$7.4 million loan?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. The process would have been similar</p> <p>20 to what we just discussed on – for Highland to</p> <p>21 make a loan to others. So, again, you know,</p> <p>22 we – we would have – either myself or someone</p> <p>23 on the team would have discussed this with</p> <p>24 the – the president and owner of – of HCMFA.</p> <p>25 Q. And who was that individual?</p>	<p>Page 273</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That was James – Jim Dondero.</p> <p>3 Q. So do I understand that in May of</p> <p>4 2019, on behalf of both the lender, Highland,</p> <p>5 and the borrower, HCMFA, Mr. Dondero would have</p> <p>6 had to approve \$7.4 million in loans?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Yes.</p> <p>10 Q. You mentioned when Mr. Morris was</p> <p>11 asking you the NAV error, N-A-V error, with</p> <p>12 respect to TerreStar, without writing us a</p> <p>13 novel, unless you feel like you have to, can</p> <p>14 you summarize what that NAV error was? What</p> <p>15 happened?</p> <p>16 A. There was a – in the Highland</p> <p>17 Global Allocation Fund, it owned at the time an</p> <p>18 equity interest in a company called TerreStar.</p> <p>19 And TerreStar is – at the time was a private</p> <p>20 company, and it may still be today. Again, I'm</p> <p>21 putting myself back then as a private company.</p> <p>22 We had – sorry, I don't mean we –</p> <p>23 the fund and the advisor used Houlihan Lokey</p> <p>24 to – to value that investment. And during</p> <p>25 that time there was some trades that were</p>



<p>Page 274</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 executed at market levels that were much lower</p> <p>3 than the Houlihan Lokey model.</p> <p>4 And based on information and</p> <p>5 discussions with the portfolio managers and,</p> <p>6 you know, principals that were very familiar</p> <p>7 with TerreStar, it was determined that those</p> <p>8 trades were non-orderly and they were not</p> <p>9 considered in the valuation as consulted with</p> <p>10 Houlihan Lokey and PricewaterhouseCoopers at</p> <p>11 the time.</p> <p>12 Subsequent to a – I can't remember</p> <p>13 the exact circumstances of why the SEC got</p> <p>14 involved. I think it was due to this – this</p> <p>15 investment became a material position in the</p> <p>16 fund. It triggered an SEC, kind of, inquiry.</p> <p>17 And as part of that inquiry, they questioned</p> <p>18 the valuation methodology. "They" meaning the</p> <p>19 SEC.</p> <p>20 And at the culmination of that</p> <p>21 process – this is all summarized – the value</p> <p>22 that was – that ultimately had to be used in</p> <p>23 the fund's NAV was different than – materially</p> <p>24 different than what the original valuation at</p> <p>25 Houlihan Lokey provided.</p>	<p>Page 275</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And given that there was this fund</p> <p>3 was, as we discussed – I don't know if we</p> <p>4 discussed it, but it was an open-ended fund</p> <p>5 that was going – that was converting to a</p> <p>6 close-end fund.</p> <p>7 Due to the fact that it was an</p> <p>8 open-ended fund, you had to recalculate NAV and</p> <p>9 see what the impact was on people – on</p> <p>10 investors coming in and out of the fund and if</p> <p>11 there is a detrimental impact and to calculate</p> <p>12 what that – what that impact was and if there</p> <p>13 was any amounts owed to the fund pursuant to</p> <p>14 the error.</p> <p>15 Q. Were you personally involved</p> <p>16 internally at either Highland or HCMFA with</p> <p>17 these investigations and discussions with the</p> <p>18 SEC?</p> <p>19 A. I was.</p> <p>20 Q. Which other key people or senior</p> <p>21 people at Highland were involved, to your</p> <p>22 recollection?</p> <p>23 A. Myself, Thomas Surgent, David Klos,</p> <p>24 Lauren Thedford, Jason Post.</p> <p>25 Q. Mr. Dondero, was he –</p>
<p>Page 276</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe Cliff Stoops. I'm trying</p> <p>3 to think. And maybe that is – that is – that</p> <p>4 is – that is all kind I can recall at the</p> <p>5 moment.</p> <p>6 Q. Do you recall whether it was</p> <p>7 determined that the fund suffered losses as a</p> <p>8 result of this error?</p> <p>9 A. The – the fund – the – the –</p> <p>10 because the open-ended nature of the fund,</p> <p>11 there were losses that were attributable to</p> <p>12 investors. Meaning they – they would have</p> <p>13 redeemed and got a less money or – or they</p> <p>14 subscribed in and maybe because they didn't get</p> <p>15 enough shares and then they later sold and then</p> <p>16 they were harmed in that fashion.</p> <p>17 And there is – there is – there</p> <p>18 were very – there were very detailed</p> <p>19 calculations and, you know, all these different</p> <p>20 scenarios that we had to – I'm sorry, I keep</p> <p>21 saying "we" – that the individuals involved</p> <p>22 had to calculate and quantify.</p> <p>23 Q. Well, do you recall whether HCMFA</p> <p>24 admitted certain fault and liability for this</p> <p>25 error?</p>	<p>Page 277</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall whether HCMFA caused</p> <p>4 any funds to be paid to the investors and the</p> <p>5 fund the subject of the NAV error?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall the approximate amount</p> <p>8 of funds, moneys paid to the investors and the</p> <p>9 fund?</p> <p>10 A. It was – it was approximately</p> <p>11 \$7 million.</p> <p>12 Q. If I was to suggest 7.8 million,</p> <p>13 would that ring more true or are you sticking</p> <p>14 with your original answer?</p> <p>15 A. It was – it was approximately 7 –</p> <p>16 7 to \$8 million. Again, I don't remember the</p> <p>17 exact number, but it was in that ballpark.</p> <p>18 Q. So regardless of whether HCMFA</p> <p>19 accepted fault or liability, it caused some</p> <p>20 \$7 million or more to be paid out to affected</p> <p>21 investors in the fund?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. And I want to make sure I'm</p> <p>25 understanding your question because there is a</p>

<p>Page 278</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 lot of different entities that are going on to</p> <p>3 my head.</p> <p>4 I think what you are saying is based</p> <p>5 on this error, shareholders were harmed by this</p> <p>6 approximately \$7.8 million – by approximately</p> <p>7 \$7.8 million. Is that what you are asking?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Yes, that was – again, I don't have</p> <p>10 the exact numbers. If I take – it was – it</p> <p>11 was in that ballpark, and there is a detail</p> <p>12 calculation and write-up that could, that –</p> <p>13 that exists someplace.</p> <p>14 Q. Now, at that time, at the time that</p> <p>15 the NAV error occurred, was there a contract in</p> <p>16 place between HCMFA and the debtor pursuant to</p> <p>17 which the debtor was providing services to</p> <p>18 HCMFA?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Was that contract generally called a</p> <p>23 shared services agreement?</p> <p>24 A. It was generally called that, but</p> <p>25 there were – there were – I mean, it – it –</p>	<p>Page 279</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it depends on who you talk to, but yes,</p> <p>3 generally, there were – there are multiple</p> <p>4 agreements.</p> <p>5 Q. Pursuant to one or more of those</p> <p>6 agreements, was the debtor providing certain</p> <p>7 services to HCMFA?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes.</p> <p>11 Q. And can you at a very high level</p> <p>12 summarize in 2018 and 2019 what those services</p> <p>13 were?</p> <p>14 A. Yes, there was a – yes.</p> <p>15 Q. Okay. Please – please go – go</p> <p>16 through a short summary.</p> <p>17 A. There was a – a cost reimbursement</p> <p>18 agreement between Highland Capital Management</p> <p>19 Fund Advisors and Highland Capital Management,</p> <p>20 L.P. That agreement was for what we referred</p> <p>21 to as front office services, so investment</p> <p>22 management, things of that nature.</p> <p>23 There was I think what most people</p> <p>24 refer to as the shared services agreement that</p> <p>25 was – that agreement was between Highland</p>
<p>Page 280</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Capital Management Fund Advisors and Highland</p> <p>3 Capital Management for back office services.</p> <p>4 Q. And can you summarize what you mean</p> <p>5 by back office services?</p> <p>6 A. Those services were for accounting,</p> <p>7 finance, tax, valuation, HR, IT, you know,</p> <p>8 legal compliance, things of – things of those</p> <p>9 nature – or things of that nature, excuse me.</p> <p>10 Q. So in the spring of 2019, do you</p> <p>11 recall whether HCMFA took the position that it</p> <p>12 was actually Highland that caused the NAV error</p> <p>13 to occur pursuant to the valuation services</p> <p>14 that Highland was providing?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I do not recall.</p> <p>18 Q. Did you ever have any discussions</p> <p>19 with anyone, Jim Dondero or anyone in the first</p> <p>20 half of 2019 as to whether Highland, the</p> <p>21 debtor, that is, had any liability to HCMFA</p> <p>22 related to the NAV error?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I do not recall.</p>	<p>Page 281</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then you mentioned that the fund</p> <p>3 was being closed and some compensation related</p> <p>4 to that. Can you – can you elaborate? What</p> <p>5 were you referring to?</p> <p>6 A. Right. So the advisor, pursuant to</p> <p>7 board approval, put a proposal in front of the</p> <p>8 shareholders of the Highland Global Allocation</p> <p>9 Fund to convert it from an open-ended fund to a</p> <p>10 closed-end fund.</p> <p>11 So an open-ended fund, when</p> <p>12 shareholders subscribe to the fund or redeem</p> <p>13 into the fund, they do it at NAV.</p> <p>14 When it is – when you have a</p> <p>15 closed-end fund, closed-end funds are – are</p> <p>16 publicly-traded, like on the New York Stock</p> <p>17 Exchange, exchanges like that, and – and</p> <p>18 shareholders or investors, they're not –</p> <p>19 they're – they're not subscribing and</p> <p>20 redeeming with the fund. They are like shares</p> <p>21 of Apple.</p> <p>22 Those shares of the Highland Global</p> <p>23 Allocation Fund trade on an exchange, and that</p> <p>24 is how you, you know, that is how, you know,</p> <p>25 you become an equity owner in the fund or you</p>

<p>Page 282</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 sell your shares and you are no longer an</p> <p>3 equity owner.</p> <p>4 As part of that proposal, the</p> <p>5 advisor told shareholders if you – if you vote</p> <p>6 for this proposal to – to convert it from an</p> <p>7 open-ended fund to a closed-end fund, we will</p> <p>8 pay you some amounts of money. I forgot – a</p> <p>9 certain number of points. I think it was</p> <p>10 like – it was like two to three points or</p> <p>11 something – something like that.</p> <p>12 Q. Okay. You mentioned when Mr. Morris</p> <p>13 was asking you, going back to those two</p> <p>14 promissory notes, you will recall the 5 million</p> <p>15 and 2.4 million, you mentioned something to the</p> <p>16 effect that Mr. Dondero told – told you to pay</p> <p>17 some moneys out of Highland. Do you remember</p> <p>18 that discussion with Mr. Morris?</p> <p>19 A. I do.</p> <p>20 Q. So, to the best of your</p> <p>21 recollection, did you have a discussion with</p> <p>22 Mr. Dondero about making some payments in May</p> <p>23 of 2019 out of Highland?</p> <p>24 A. I recall, as I testified earlier,</p> <p>25 that I had a conversation with Mr. Dondero</p>	<p>Page 283</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for – for these amounts attributable to – it</p> <p>3 was either the error – you know, the error,</p> <p>4 and in that conversation he said, go get the</p> <p>5 money from Highland. I believe that is what I</p> <p>6 testified earlier, and that – that is my</p> <p>7 recollection.</p> <p>8 Q. Do you recall if that was an</p> <p>9 in-person meeting or some other mode for the</p> <p>10 meeting?</p> <p>11 A. I – I – I recall that being</p> <p>12 in-person.</p> <p>13 Q. Do you recall if anyone else was</p> <p>14 present, or was it just you and Mr. Dondero?</p> <p>15 A. I recall just he and I.</p> <p>16 Q. And the moneys that he told you to</p> <p>17 find from – or get from Highland, was that in</p> <p>18 the amount of \$5 million and \$2.4 million?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I believe so, but I would have to go</p> <p>22 back and look and see when those moneys were</p> <p>23 actually paid into the – into the fund and,</p> <p>24 you know, when those transfers were done. If</p> <p>25 they were all done around that same time, then</p>
<p>Page 284</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 yes, I would say it was – it was all related</p> <p>3 to that.</p> <p>4 Q. Did Mr. Dondero tell you that those</p> <p>5 funds would be a loan from Highland to HCMFA?</p> <p>6 A. I don't recall.</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 Q. Now, and forgive me, I'm probably</p> <p>10 the only non-American born here, but I speak</p> <p>11 reasonably well in English. I don't recall,</p> <p>12 does that mean you don't remember or does that</p> <p>13 mean it didn't happen?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It – it means I don't – I don't</p> <p>17 remember.</p> <p>18 Q. Did Mr. Dondero tell you to have</p> <p>19 those two promissory notes prepared?</p> <p>20 A. I don't recall.</p> <p>21 Q. When you – again, when you say, I</p> <p>22 don't recall today, that means that sitting</p> <p>23 here today, you just don't remember one way or</p> <p>24 the other. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 285</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it possible that you, having</p> <p>3 heard what Mr. Dondero said and seeing funds</p> <p>4 being transferred, assumed that that would be a</p> <p>5 loan without him actually telling you that</p> <p>6 would be a loan?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Sorry, I want to make sure – did I</p> <p>10 ask the amounts that were transferred that I –</p> <p>11 that – that I assumed that that was a loan?</p> <p>12 Q. Well, let me – let me take – let</p> <p>13 me try again.</p> <p>14 So you have established already that</p> <p>15 there were quite a number of promissory notes</p> <p>16 back and forth – I'm sorry, quite a number of</p> <p>17 promissory notes with affiliated companies and</p> <p>18 individuals owing Highland money; right?</p> <p>19 A. Yes.</p> <p>20 Q. And you have established that there</p> <p>21 were many transactions and transfers going back</p> <p>22 and forth over the years; right?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. In – yes, in my capacity as CFO and</p> <p>25 my employment, yes, that is – yes.</p>

<p style="text-align: right;">Page 286</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that's part of the reason why</p> <p>3 you just can't remember some of the details</p> <p>4 today because this – this happened years ago,</p> <p>5 and there were a number of transactions. Is</p> <p>6 that accurate?</p> <p>7 MS. DANDENEAU: Objection to the</p> <p>8 form.</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I mean, I deal with thousands of –</p> <p>12 of – of – of transactions, you know, whether</p> <p>13 it has – the processing of transactions, you</p> <p>14 know, if it has got, you know, more – more</p> <p>15 zeros, you know, behind it than others.</p> <p>16 When you look at thousands of</p> <p>17 transactions over the years for funds and</p> <p>18 advisors and – and, you know, financial</p> <p>19 statements, I mean, it is – it is very hard</p> <p>20 going back in – in – in my – you know,</p> <p>21 14-ish year career at – at Highland to</p> <p>22 remember a lot of those details, especially</p> <p>23 when I don't have any records or books or</p> <p>24 anything like that, and – and going back many</p> <p>25 years.</p>	<p style="text-align: right;">Page 287</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that is fine. That – that –</p> <p>3 that is why I asked the question.</p> <p>4 Is it possible in May of 2019 when</p> <p>5 Mr. Dondero told you to transfer the funds from</p> <p>6 Highland, you just assumed on your own that</p> <p>7 those would be loans without him actually</p> <p>8 telling you that those would be loans?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I don't know.</p> <p>12 Q. I'm sorry, you –</p> <p>13 A. I said I don't know.</p> <p>14 Q. Okay. Well, as the – as the CFO</p> <p>15 for Highland, if you saw \$7.4 million going</p> <p>16 out, you would feel some responsibility to</p> <p>17 account for that, wouldn't you?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that those would</p> <p>22 be in the range large enough to rise up to your</p> <p>23 level?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p style="text-align: right;">Page 288</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. If – I don't know if I understand</p> <p>3 your question. Those amounts would arise to my</p> <p>4 level where I would be involved or...</p> <p>5 Q. You would want to know what a</p> <p>6 transfer for that amount, \$7.4 million, was all</p> <p>7 about, as the CFO of Highland, wouldn't you?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, I make it – I mean, I – I</p> <p>11 review all sorts of payments, I mean, even</p> <p>12 smaller dollar payments on a periodic basis,</p> <p>13 you know, to – to – to understand and to make</p> <p>14 sure that we are paying things in a – you</p> <p>15 know, in – in – in an informed way. And, you</p> <p>16 know – and we're – and we're paying things</p> <p>17 pursuant to vendor contracts and things like</p> <p>18 that.</p> <p>19 Q. So as part of that, is it possible</p> <p>20 that seeing \$7.4 million go out you would have</p> <p>21 promissory notes made in order to keep a paper</p> <p>22 trail, assuming that those were loans, when</p> <p>23 perhaps they were never intended to be loans by</p> <p>24 Mr. Dondero?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p style="text-align: right;">Page 289</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I don't know. As I testified</p> <p>4 earlier, I had conversations with Mr. Dondero</p> <p>5 about – about the – the – the moneys that</p> <p>6 were needed for the NAV error. And I recall</p> <p>7 him saying go get it from Highland – or get it</p> <p>8 from Highland.</p> <p>9 Q. Well, why did you sign those</p> <p>10 promissory notes and why didn't you have him</p> <p>11 sign them?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. I don't know.</p> <p>15 Q. You mentioned earlier that you</p> <p>16 typically don't sign promissory notes. Am I</p> <p>17 remembering your testimony correctly?</p> <p>18 I mean, promissory notes on behalf</p> <p>19 of the entities. Not yourself, obviously.</p> <p>20 A. Yes, that is what I said earlier.</p> <p>21 Q. Do you recall any other promissory</p> <p>22 notes in the million-plus range that you had</p> <p>23 ever signed before on behalf of any entity?</p> <p>24 A. There is – there has been a lot of</p> <p>25 transactions over the years. I don't – I</p>

<p>Page 290</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't – I don't recall generally. I don't –</p> <p>3 I don't recall.</p> <p>4 Q. So – but to the best of your</p> <p>5 recollection, it was on your initiative,</p> <p>6 following your discussion with Mr. Dondero,</p> <p>7 that you had someone draft those two promissory</p> <p>8 notes; is that correct?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes, we would have – the team, as I</p> <p>12 stated earlier, we don't draft promissory</p> <p>13 notes. "The team" meaning the accounting and</p> <p>14 finance team.</p> <p>15 So the team would have worked with</p> <p>16 the legal group at Highland to draft any notes.</p> <p>17 Q. Do you believe or do you have any</p> <p>18 recollection as to whether you would have done</p> <p>19 that pursuant to an email or telephone call or</p> <p>20 in-person meeting?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Are you asking if I would have – if</p> <p>24 those notes would have been drafted pursuant to</p> <p>25 an email or phone call?</p>	<p>Page 291</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Strike that.</p> <p>3 Do you recall whether you sent an</p> <p>4 email to anyone asking them to draft those two</p> <p>5 promissory notes?</p> <p>6 A. I don't recall because, again,</p> <p>7 once – I would have instructed – likely</p> <p>8 instructed the team to – to work with the</p> <p>9 legal group to draft these documents.</p> <p>10 I – I – I – yeah, I didn't – I</p> <p>11 mean, that is more an operational-type</p> <p>12 procedure. So, you know, a manager or a</p> <p>13 controller or working with legal. You know,</p> <p>14 they – they can certainly handle that task to</p> <p>15 get that – you know, to request that from</p> <p>16 legal.</p> <p>17 Q. And who on your team do you think</p> <p>18 you would have asked to do that?</p> <p>19 MR. MORRIS: Objection –</p> <p>20 Q. Who would have been the logical</p> <p>21 person or people, if you don't remember their</p> <p>22 name today?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. It – it – there is only two</p>
<p>Page 292</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 managers of the group. That would have been</p> <p>3 Dave Klos or Kristin Hendrix.</p> <p>4 Dave was the – one of his duties</p> <p>5 was managing the valuation team, and so he was</p> <p>6 intimately involved with this process. So, you</p> <p>7 know...</p> <p>8 Q. Okay.</p> <p>9 A. I don't recall specifically but, I</p> <p>10 mean, my general – you know, I – I – I</p> <p>11 likely would have talked to Dave first about it</p> <p>12 versus someone like Kristin who hadn't been</p> <p>13 intimately involved.</p> <p>14 Q. And – and do you have a view as to</p> <p>15 whether it is most likely that you would have</p> <p>16 done that by email or in-person or how would</p> <p>17 you believe you would have communicated that to</p> <p>18 Mr. Klos?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I likely would have done that in</p> <p>22 person. Again, if things of this nature</p> <p>23 that – again, you have to put ourselves back</p> <p>24 to, we have been working on this very stressful</p> <p>25 project for many, many months. And once the</p>	<p>Page 293</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 go-ahead was to – you know, we see the light</p> <p>3 at the end of the tunnel with wrapping this up</p> <p>4 and making shareholders whole – sorry to say</p> <p>5 "we" – you know, the – so the folks that are</p> <p>6 involved in it.</p> <p>7 I like to talk to people</p> <p>8 face-to-face and – and – and go to – and go</p> <p>9 to their desk, because that shows if I'm going</p> <p>10 to their desk that – that is something that I</p> <p>11 want done, you know.</p> <p>12 Q. And do you remember, Mr. Waterhouse,</p> <p>13 getting those two promissory notes in paper</p> <p>14 format or by email before they were executed?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall.</p> <p>18 Q. For whatever was the ordinary course</p> <p>19 back then in May 2019, would you expect to have</p> <p>20 received them only on paper or would you have</p> <p>21 expected to have received them in Word document</p> <p>22 or PDF document by email?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I – I didn't sign – I signed very</p>



<p>Page 294</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 few documents via email. I can't say that it</p> <p>3 never happened, but people either stopped by my</p> <p>4 office and physically walked in documents for</p> <p>5 signature that we discussed face-to-face.</p> <p>6 Or documents were – if – if –</p> <p>7 if – if – let's say I wasn't there or I</p> <p>8 wasn't available, documents were dropped off.</p> <p>9 I had – I had some in- and outboxes in front</p> <p>10 of my – my office there at the Crescent.</p> <p>11 Documents would be dropped off for</p> <p>12 signature. There would be a cover sheet that</p> <p>13 would be – have been applied to those</p> <p>14 documents detailing, you know, who dropped it</p> <p>15 off, the purpose, why, what time.</p> <p>16 And then, you know, as I stated, I</p> <p>17 don't draft documents and I always go to the</p> <p>18 legal group and the compliance group to make</p> <p>19 sure that they're in the loop. And there is</p> <p>20 a – a box or section that says, Has legal</p> <p>21 reviewed or approved, or something to that</p> <p>22 nature.</p> <p>23 Again, I don't – I don't have</p> <p>24 access to that cover sheet anymore, but it</p> <p>25 was – it was something to that effect.</p>	<p>Page 295</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And my assistant, you know, if she</p> <p>3 was there, she would review that – you know,</p> <p>4 whatever was being dropped off. And if that</p> <p>5 has legal, you know, reviewed or – reviewed or</p> <p>6 approved it, if that wasn't – if that stuff</p> <p>7 hadn't been done, it was like she would just</p> <p>8 tell them like, go – go – go to the legal</p> <p>9 group, because –</p> <p>10 Q. Let me – let me pause –</p> <p>11 MS. DANDENEAU: Let him finish.</p> <p>12 MR. MORRIS: Thank you. Go ahead.</p> <p>13 A. I take – go to the legal group</p> <p>14 because that – that was my – you know, I</p> <p>15 didn't – I didn't review anything that – that</p> <p>16 they weren't – you know, or there wasn't some</p> <p>17 representation made to me that they had</p> <p>18 reviewed, approved in some capacity.</p> <p>19 Again, my – my – my goal, as CFO,</p> <p>20 is to provide transparency and make sure that</p> <p>21 groups like compliance and other things – and</p> <p>22 the other group in legal are – are in – you</p> <p>23 know, their – they're made aware of</p> <p>24 transactions of – you know, that are crossing</p> <p>25 my desk.</p>
<p>Page 296</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Because I'm not in every</p> <p>3 conversation. They're not in every</p> <p>4 conversation – meaning legal compliance – and</p> <p>5 I just want to make sure that – that everyone</p> <p>6 is in sync to, you know, to – to the extent</p> <p>7 possible.</p> <p>8 Q. So if we summarize, you don't</p> <p>9 specifically remember signing these two notes,</p> <p>10 but most likely it would have been that they</p> <p>11 would have presented – been presented to you</p> <p>12 physically on paper?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. They would – they would have been</p> <p>16 presented physically on paper most likely or</p> <p>17 someone would have left it. But, I mean,</p> <p>18 again, I don't – I don't recall.</p> <p>19 Q. I understand. Understand.</p> <p>20 When you signed – when you signed</p> <p>21 documents, when you personally signed</p> <p>22 documents, did you typically use a ink pen or</p> <p>23 did you use a stamp?</p> <p>24 A. No, I – I – I use a – an – an</p> <p>25 ink pen.</p>	<p>Page 297</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know – was there a file at</p> <p>3 Highland kept anywhere with ink-signed</p> <p>4 originals of a promissory notes in general or</p> <p>5 these two promissory notes specifically?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Sorry, I just want to make sure I</p> <p>9 understand your question. Are you saying is</p> <p>10 there a file somewhere that has ink-signed</p> <p>11 originals of these two promissory notes?</p> <p>12 Q. Yes.</p> <p>13 A. I would – I would assume they're</p> <p>14 some place. I mean –</p> <p>15 Q. Well, was there a – was there a</p> <p>16 place where Highland generally kept originals</p> <p>17 of promissory notes owed to it?</p> <p>18 A. I wouldn't – no.</p> <p>19 MR. RUKAVINA: Mr. Nguyen, would you</p> <p>20 please pull up my A7, alpha 7.</p> <p>21 Q. These are the two promissory notes,</p> <p>22 Mr. Waterhouse.</p> <p>23 (Exhibit A7 marked.)</p> <p>24 Q. And please – Mr. Waterhouse, please</p> <p>25 command my associate to scroll down as you need</p>

<p>Page 298</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to, but I want you to take a very close look at</p> <p>3 your two signatures here and tell me whether</p> <p>4 you believe, in fact, that you ink signed them</p> <p>5 or whether you –</p> <p>6 MS. DANDENEAU: Mr. Rukavina,</p> <p>7 Mr. Waterhouse has the copies.</p> <p>8 MR. RUKAVINA: Perfect. Then you</p> <p>9 can take this down, Mr. Nguyen.</p> <p>10 A. These – these – these signatures</p> <p>11 are identical, now that I stare at them, and I</p> <p>12 mean, they are so close – I mean, they're</p> <p>13 identical that, I mean, even with my chicken</p> <p>14 scratch signature, I don't know if I can – you</p> <p>15 know, I do this 100 times, could I do that</p> <p>16 as – as precisely as I see between the two</p> <p>17 notes.</p> <p>18 Q. Well, that is why I ask.</p> <p>19 Mr. Waterhouse, now that you have examined</p> <p>20 them, does it seem like it is more likely that</p> <p>21 you actually electronically signed these?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Is – I don't – I don't recall</p> <p>25 specifically. As I said before, my assistant</p>	<p>Page 299</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 did have a – an electronic signature, and that</p> <p>3 was used from time to time. It wasn't as</p> <p>4 common practice back in 2019. It definitely</p> <p>5 was more common practice when we had to work</p> <p>6 from home and remotely for COVID because it</p> <p>7 that made it almost impossible to, right,</p> <p>8 provide wet signatures since we're all working</p> <p>9 from home remotely.</p> <p>10 Q. Well, going just for these two</p> <p>11 promissory notes, Mr. Waterhouse, in light of</p> <p>12 your inability to remember any details, are you</p> <p>13 sure you actually signed either or both of</p> <p>14 those notes?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall specifically</p> <p>17 signing – actually physically signing these</p> <p>18 notes. As I said before, I don't recall doing</p> <p>19 that. This – this looks like my signature,</p> <p>20 but yet these two signatures are identical.</p> <p>21 Q. So you don't recall physically</p> <p>22 signing them, and I take it you don't recall</p> <p>23 electronically signing them either?</p> <p>24 A. I don't recall. You know, Highland</p> <p>25 has all my emails. If that occurred, you know,</p>
<p>Page 300</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you know, I don't have any of these records is</p> <p>3 what I'm saying. I don't have any of those</p> <p>4 records.</p> <p>5 Q. That is why I'm asking you these</p> <p>6 questions in great detail because I don't have</p> <p>7 those emails. I'm trying to – I'm hoping that</p> <p>8 you will give me some names or some details so</p> <p>9 I can go look for more emails, but again, you</p> <p>10 don't remember any – any individual, other</p> <p>11 than Mr. Dondero that we've discussed, you</p> <p>12 don't remember any individual with whom you</p> <p>13 discussed these promissory notes prior to their</p> <p>14 execution?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall discussing it with</p> <p>18 anybody else.</p> <p>19 Q. Okay.</p> <p>20 A. I mean, prior –</p> <p>21 Q. I understand.</p> <p>22 A. You know, there was no one else –</p> <p>23 there was no one else in that meeting that I</p> <p>24 recall with Mr. Dondero.</p> <p>25 Q. Now, when you established that by</p>	<p>Page 301</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 May of 2019 –</p> <p>3 A. And – and from what I recall, and</p> <p>4 the reason why I was by myself is – is, you</p> <p>5 know, I don't – I don't want to speculate, I'm</p> <p>6 sorry.</p> <p>7 Q. Okay. We have established that by</p> <p>8 May of 2019, in your view, the liabilities of</p> <p>9 HCMFA exceeded its assets; correct?</p> <p>10 A. Yeah. I mean, again, I don't have</p> <p>11 financial statements in front of me, but I</p> <p>12 think, if I recall, we'd have to go through the</p> <p>13 testimony with Mr. Morris, I believe that was</p> <p>14 the case.</p> <p>15 Q. In fact, you will recall that in</p> <p>16 April of 2019, Mr. Dondero signed a document</p> <p>17 that extended the demand feature of two prior</p> <p>18 notes to May 31, 2019. Do you recall that?</p> <p>19 MS. DEITSCH-PEREZ: I think you</p> <p>20 might – maybe have the court reporter read</p> <p>21 that back. You might have misspoke.</p> <p>22 (Record read.)</p> <p>23 MR. RUKAVINA: And I did misspeak.</p> <p>24 Q. I meant to say to May 31, 2021. Do</p> <p>25 you recall that, sir?</p>

<p>Page 302</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Yes.</p> <p>5 MR. RUKAVINA: And, Mr. Nguyen, just</p> <p>6 so that the record is clear, will you please</p> <p>7 pull up my Exhibit Alpha 10, A10.</p> <p>8 (Exhibit A10 marked.)</p> <p>9 Q. You don't have this one in front of</p> <p>10 you, Mr. Waterhouse? This is the one that</p> <p>11 Mr. Morris used earlier. Do you see that</p> <p>12 document, sir?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And this is what you were testifying</p> <p>15 about before when Mr. Morris was asking you.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 Q. So here is my question for you,</p> <p>19 Mr. Waterhouse: As the chief financial officer</p> <p>20 of Highland, was it prudent for Highland less</p> <p>21 than three weeks later to be lending</p> <p>22 \$7.2 million to an insolvent entity that</p> <p>23 couldn't even then pay its debts back to</p> <p>24 Highland?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 303</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Sorry, I just want to make sure –</p> <p>5 are you asking me, did you say, was it prudent</p> <p>6 for Highland to loan \$7.4 million to HCMFA a</p> <p>7 few weeks after this document was executed?</p> <p>8 Q. Yes, and at a time when HCMFA's</p> <p>9 liabilities exceeded its assets.</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't – it is odd. I don't know.</p> <p>13 MR. RUKAVINA: You can take this</p> <p>14 exhibit down, Mr. Nguyen.</p> <p>15 Q. Do you recall asking anyone,</p> <p>16 Mr. Dondero or – or anyone outside as to</p> <p>17 whether Highland ought to be lending</p> <p>18 \$7.4 million to HCMF regarding HCMF's</p> <p>19 creditworthiness?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you receive personally any of</p> <p>24 that \$7.4 million?</p> <p>25 A. No.</p>
<p>Page 304</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you even –</p> <p>3 MR. MORRIS: I didn't hear that</p> <p>4 question, sir.</p> <p>5 MR. RUKAVINA: The one that he</p> <p>6 answered, John, or my new one?</p> <p>7 MR. MORRIS: No, no, your question,</p> <p>8 Davor.</p> <p>9 MR. RUKAVINA: I had asked him</p> <p>10 whether he received any of the</p> <p>11 \$7.4 million. He said no.</p> <p>12 MR. MORRIS: Yeah. I thought there</p> <p>13 was a question after that. Maybe I was</p> <p>14 mistaken. I apologize.</p> <p>15 MR. RUKAVINA: I had started a new</p> <p>16 question, so here, let me start the new</p> <p>17 question again.</p> <p>18 Q. Did you personally receive any</p> <p>19 direct benefit from those two notes for</p> <p>20 \$7.4 million?</p> <p>21 A. No.</p> <p>22 Q. Did you ever personally consider</p> <p>23 yourself obligated to repay either or both of</p> <p>24 those notes?</p> <p>25 A. No.</p>	<p>Page 305</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Pull up those notes</p> <p>3 again, Mr. Nguyen.</p> <p>4 Q. You can have them in front of you,</p> <p>5 Exhibit 7, Mr. Waterhouse, whatever is easier</p> <p>6 for you. If you go to your signature page, my</p> <p>7 question to you is, why did you not include</p> <p>8 your title as treasurer by your name, Frank</p> <p>9 Waterhouse?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I didn't – I didn't draft this</p> <p>12 document.</p> <p>13 Q. So you relied on whoever drafted it</p> <p>14 to draft it correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But back then when you signed</p> <p>17 this, did it ever cross your mind that you were</p> <p>18 the maker on these notes?</p> <p>19 A. No.</p> <p>20 Q. Back then when you signed this</p> <p>21 document, did it ever cross your mind that you</p> <p>22 could be a co-obligor on these notes?</p> <p>23 A. No. I didn't receive \$7.4 million,</p> <p>24 I mean...</p> <p>25 Q. But can you say that HCMFA received</p>

<p>Page 306</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$7.4 million?</p> <p>3 A. I would have to go back and look and</p> <p>4 check in, you know, the – the financial</p> <p>5 records and the bank statements.</p> <p>6 MR. RUKAVINA: You can take this</p> <p>7 exhibit down, Mr. Nguyen.</p> <p>8 Q. Mr. Waterhouse, I'm not trying to be</p> <p>9 a smart-ass, but if the law says that because</p> <p>10 of the way that you signed this promissory</p> <p>11 note, if that is what the law says, that that</p> <p>12 made you personally – personally liable, then</p> <p>13 you would agree with me that that was never</p> <p>14 your intent?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. That was never – I wouldn't sign a</p> <p>18 note and not get consideration in return.</p> <p>19 Q. So putting all other issues aside,</p> <p>20 if the law – if the law says that you were</p> <p>21 liable for those notes because of how you</p> <p>22 signed them, then would you agree with me that</p> <p>23 these notes are a mistake?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 307</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. So do you agree with me that it's</p> <p>6 odd – I think that is the word you used –</p> <p>7 that Highland would be loaning \$7.4 million a</p> <p>8 few weeks after that extension to an entity</p> <p>9 whose liabilities exceeded its assets, and you</p> <p>10 would agree with me that it was never your</p> <p>11 intention to be in any way liable for these two</p> <p>12 promissory notes; correct?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. Sorry, you – you asked a lot there.</p> <p>16 MR. RUKAVINA: I will strike it and</p> <p>17 I will move on.</p> <p>18 Let's go to – pull up Exhibit 9,</p> <p>19 please Mr. Nguyen – Alpha 9, I'm sorry, Alpha</p> <p>20 9, A9.</p> <p>21 (Exhibit A9 marked.)</p> <p>22 Q. Sir, take a moment to look at this,</p> <p>23 but this is an email, and you will see attached</p> <p>24 July 31, 2020 affiliate notes.</p> <p>25 Do you see that attachment?</p>
<p>Page 308</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you see an entry for</p> <p>4 Highland Capital Management Fund Advisors?</p> <p>5 MR. MORRIS: I'm sorry, hold on.</p> <p>6 Where are you looking?</p> <p>7 MR. RUKAVINA: Last page, John.</p> <p>8 MR. MORRIS: Is it the page on the</p> <p>9 screen?</p> <p>10 MR. RUKAVINA: Oh, I'm sorry.</p> <p>11 Mr. Nguyen just did it. Yes, the last page</p> <p>12 there.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 Q. Do you see an entry there for HCMFA?</p> <p>15 A. Yes.</p> <p>16 Q. About \$10.5 million.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And, now, do you have any</p> <p>20 explanation for why if HCMFA owed \$7.4 million,</p> <p>21 plus the 5.3 million that had been extended,</p> <p>22 why that amount was only 10.5 million?</p> <p>23 A. I don't know. Okay.</p> <p>24 MR. RUKAVINA: Close this one and</p> <p>25 pull up, Mr. Nguyen, the schedules,</p>	<p>Page 309</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 schedule of assets. What exhibit is this</p> <p>3 of ours, Mr. Nguyen?</p> <p>4 MR. NGUYEN: This is A11.</p> <p>5 MR. RUKAVINA: Oh, this will be A11.</p> <p>6 (Exhibit A11 marked.)</p> <p>7 Q. You don't have this in front of you,</p> <p>8 Mr. Waterhouse?</p> <p>9 A. Okay.</p> <p>10 Q. This is what Mr. Morris used</p> <p>11 earlier. Do you remember looking at this with</p> <p>12 Mr. Morris?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: You might have to</p> <p>15 zoom in a little. Okay.</p> <p>16 Q. Now, I see Affiliate Note A, B, and</p> <p>17 C.</p> <p>18 Do you have any recollection as to</p> <p>19 why the names of the affiliates are omitted?</p> <p>20 A. I don't. I testified earlier that,</p> <p>21 you know, the team worked with DSI in providing</p> <p>22 these. I – I don't – I don't know.</p> <p>23 Q. Can we deduce – is it logical to</p> <p>24 deduce that Affiliate Note A would be NexPoint</p> <p>25 given its size of \$24.5 million?</p>

<p>Page 310</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. I mean, it – it is a – it is – it</p> <p>5 is approximate.</p> <p>6 Q. Well, can we – can we deduce – or,</p> <p>7 I'm sorry, strike that.</p> <p>8 Can you, sitting here today,</p> <p>9 logically conclude that Affiliate Note B or C</p> <p>10 represents HCMFA?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. I don't know. I don't know. I</p> <p>14 can't.</p> <p>15 Q. Okay. As of the petition date, we</p> <p>16 have established that HCMFA, under promissory</p> <p>17 notes, owed \$7.4 million and \$5.3 million to</p> <p>18 the debtor; correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And by my reckoning, that</p> <p>23 would be somewhere approaching \$13 million.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 311</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. It would be \$12.7 million. Is that</p> <p>3 generally correct?</p> <p>4 A. Sorry, the amounts were 7.4, 5.3.</p> <p>5 Q. Yes.</p> <p>6 A. Okay. Yeah, that – that – I can</p> <p>7 do that math, yes.</p> <p>8 Q. Do you have any explanation or any</p> <p>9 understanding of why there is no similar entry</p> <p>10 listed here on the schedule of assets filed</p> <p>11 with the bankruptcy court?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. We have to look at</p> <p>15 the supporting schedules, like I talked about</p> <p>16 other – presumably there is – there is a</p> <p>17 build to the schedule that would provide the</p> <p>18 detail.</p> <p>19 Q. Well, that was going to be my next</p> <p>20 question. You anticipated it.</p> <p>21 MR. RUKAVINA: You can – you can</p> <p>22 take this down, Mr. Nguyen.</p> <p>23 Q. Do you believe that whenever you and</p> <p>24 your team provided the underlying data to the</p> <p>25 financial advisor that the actual names of the</p>
<p>Page 312</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates for Affiliate Note A, B, and C would</p> <p>3 have been listed there?</p> <p>4 A. Are you asking we provided the names</p> <p>5 to the financial advisor? I don't – I don't</p> <p>6 understand who the financial advisor is.</p> <p>7 Q. I'm sorry, DSI.</p> <p>8 Let me ask the question this way,</p> <p>9 Mr. Waterhouse.</p> <p>10 Whenever you provided information</p> <p>11 about the affiliate notes to DSI, do you</p> <p>12 believe that you would have included the actual</p> <p>13 names of the affiliates, you or your team, or</p> <p>14 that you would have done the Affiliate Note A,</p> <p>15 Note B, Note C?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 MS. DANDENEAU: Objection to the</p> <p>19 form.</p> <p>20 A. We – like I testified earlier, when</p> <p>21 we were – we gave everything to – to DSI. We</p> <p>22 were giving all of our records, all of our</p> <p>23 files, everything to DSI. We weren't redacting</p> <p>24 information or saying, hey, here is a note,</p> <p>25 here is Affiliate Note A or B.</p>	<p>Page 313</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I mean, it was – our job and our</p> <p>3 focus – and I testified in court back in 2019;</p> <p>4 right – was – was to be transparent and, you</p> <p>5 know, get DSI up to speed on – on the matters</p> <p>6 at Highland. So I can't see us redacting at</p> <p>7 that point.</p> <p>8 MR. RUKAVINA: Mr. Nguyen, will you</p> <p>9 please pull up Mr. Morris' Exhibit 36.</p> <p>10 Just the very first page, the very top</p> <p>11 email. You might zoom in a little bit.</p> <p>12 Q. Now, you recall being asked about</p> <p>13 this by Mr. Morris?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you wrote: The HCMFA note is a</p> <p>16 demand note.</p> <p>17 You wrote that; right?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, weren't there by that</p> <p>20 point in time several notes?</p> <p>21 A. Yes, there were. Again, I don't –</p> <p>22 I don't remember everything specifically. I</p> <p>23 mean –</p> <p>24 Q. I understand. I understand.</p> <p>25 So this is an example where – where</p>



<p>Page 314</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you might have made a mistake by referring to a</p> <p>3 singular instead of a plural; right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you – you wrote – a</p> <p>6 couple of sentences later, you wrote: There</p> <p>7 was an agreement between HCMLP and HCMFA the</p> <p>8 earliest they could demand is May 2021.</p> <p>9 You wrote that; right?</p> <p>10 A. Yes.</p> <p>11 Q. But I think you – you agreed with</p> <p>12 Mr. Morris that that can't possibly apply to</p> <p>13 the May 2019 notes, can it?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question. That is not what he</p> <p>16 testified to.</p> <p>17 Q. Let me ask – let me ask a different</p> <p>18 question.</p> <p>19 Sitting here today – or if you can</p> <p>20 answer me from your memory on October 6,</p> <p>21 2020 – did the April acknowledgment that</p> <p>22 extended the maturity date apply to the</p> <p>23 May 2019 notes also?</p> <p>24 A. I don't recall specifically.</p> <p>25 Q. Well, you recall that the notes that</p>	<p>Page 315</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you signed were demand notes; right?</p> <p>3 A. Yes.</p> <p>4 Q. Do you find it logical, based on</p> <p>5 your experience, that had they intended to have</p> <p>6 a different or a set maturity date, you would</p> <p>7 have instructed that that set maturity date be</p> <p>8 included instead of a demand feature?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Sorry, just want to make sure I</p> <p>12 understand. You are saying that – that the</p> <p>13 \$5 million note, the \$2.4 million note, if</p> <p>14 those were supposed to be a term note, that I</p> <p>15 would have made sure that those were a term</p> <p>16 note?</p> <p>17 Q. I'm saying – I'm saying,</p> <p>18 Mr. Waterhouse, that on May the 2nd and May the</p> <p>19 3rd, 2019, if you intended that those two</p> <p>20 promissory notes could not be called until May</p> <p>21 2021, would you have included such language in</p> <p>22 those two promissory notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I guess – I'm sorry, I don't recall</p>
<p>Page 316</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 putting language in those May notes. I don't</p> <p>3 remember what language you are referring to.</p> <p>4 Q. Well, let's read this again.</p> <p>5 There was an agreement between HCMLP</p> <p>6 and HCMFA the earliest they could demand is May</p> <p>7 2021.</p> <p>8 Do you recall that agreement?</p> <p>9 A. Yes, that was the agreement we</p> <p>10 looked at earlier; correct?</p> <p>11 Q. Okay. Yes.</p> <p>12 Do you – do you understand now that</p> <p>13 that agreement that we looked at earlier also</p> <p>14 applied to the May 2019 notes that you signed?</p> <p>15 A. I don't – I don't know.</p> <p>16 Q. But as of October 6, 2020, you're</p> <p>17 writing that there is one demand note and</p> <p>18 you're categorizing that demand note as not</p> <p>19 being demandable on May 2021; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you know now that you made at</p> <p>22 least one mistake in this email; correct?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. Yes.</p>	<p>Page 317</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: You can pull this</p> <p>3 down, Mr. Nguyen.</p> <p>4 Q. So, Mr. Waterhouse, you don't</p> <p>5 remember Mr. Dondero telling you to make these</p> <p>6 loans or not. HCMLP was loaning \$7.4 million</p> <p>7 to someone that their assets were less than</p> <p>8 their liabilities.</p> <p>9 We don't see on the July list of</p> <p>10 notes, where there is \$12.7 million of notes,</p> <p>11 we don't see that on the bankruptcy schedules,</p> <p>12 and we have this Exhibit 36 where you are</p> <p>13 confused.</p> <p>14 Are you prepared to tell me, sir,</p> <p>15 today that you might have made a mistake in</p> <p>16 executing those two promissory notes?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. I – I don't know.</p> <p>20 Q. And if it turns out that you're</p> <p>21 personally liable for those promissory notes,</p> <p>22 it would certainly be a mistake, wouldn't it?</p> <p>23 MS. DANDENEAU: Objection to the</p> <p>24 form.</p> <p>25 MR. MORRIS: Join.</p>

<p>Page 318</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. If Mr. Dondero testifies that he</p> <p>4 never told you to make these loans, would you</p> <p>5 disagree with his testimony?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Like I testified earlier with my</p> <p>9 conversation with Mr. Dondero, all I recall is</p> <p>10 he said, get the money from Highland.</p> <p>11 Q. And if Mr. Dondero testifies that</p> <p>12 he, in consultation with other senior personnel</p> <p>13 at Highland, decided that Highland needed to</p> <p>14 pay HCMFA \$7.4 million as compensation for the</p> <p>15 NAV error and not a loan, would you have any</p> <p>16 reason to disagree with Mr. Dondero?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. If that was – if that was his</p> <p>20 intent, yes, it would – I would –</p> <p>21 Q. Do you have any reason to disagree</p> <p>22 with him?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. If that was his intent, I don't</p>	<p>Page 319</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 know. I don't know how I disagree with that.</p> <p>3 Q. And just to confirm, you don't</p> <p>4 remember ever asking Mr. Dondero whether you</p> <p>5 should have two promissory notes prepared?</p> <p>6 A. No.</p> <p>7 Q. And you don't remember discussing</p> <p>8 with Mr. Dondero what the terms of those two</p> <p>9 promissory notes should be?</p> <p>10 A. I don't recall – I testified all I</p> <p>11 recall is he said, get the money from Highland.</p> <p>12 I don't – the – the terms of the note, I</p> <p>13 don't recall ever having a discussion around</p> <p>14 the terms of the note, but since I don't draft</p> <p>15 the notes, that – there could have been a</p> <p>16 conversation with other people later.</p> <p>17 Q. Do you have any memory of whether</p> <p>18 after the notes were drafted, but before you</p> <p>19 signed them, that you communicated with</p> <p>20 Mr. Dondero in any way to just confirm or – or</p> <p>21 get his blessing or ratification to signing</p> <p>22 those notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>
<p>Page 320</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Again, the only thing you remember,</p> <p>3 sitting here today, was Mr. Dondero said, get</p> <p>4 the money from Highland, and that is it, that</p> <p>5 is all you remember?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. I testified to that several times.</p> <p>9 This was over two years ago. A lot has</p> <p>10 happened. That is all I recall.</p> <p>11 Q. And help me here. I'm not very</p> <p>12 technologically astute. When you – and I – I</p> <p>13 recognize that you do it rarely, but when you</p> <p>14 sign a document electronically, do you believe</p> <p>15 that there is an electronic record of you</p> <p>16 having authorized or signed a document</p> <p>17 electronically?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. I – I don't know the tech answer to</p> <p>21 that, but, you know, since I don't have – I</p> <p>22 don't ever attach my signature block</p> <p>23 electronically, my assistant would have done</p> <p>24 that, and if that is done over email like we</p> <p>25 did several times – you know, multiple,</p>	<p>Page 321</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 multiple times over COVID, she would attach my</p> <p>3 signature block and then email it out to</p> <p>4 whatever party.</p> <p>5 Q. What was your assistant's name in</p> <p>6 May 2019?</p> <p>7 A. It was Naomi Chisum.</p> <p>8 Q. Is she the only one? I'm sorry, was</p> <p>9 she your only assistant that would have maybe</p> <p>10 facilitated logistically something like you</p> <p>11 just described?</p> <p>12 A. You know, she was out on maternity</p> <p>13 leave at some point. I don't – I don't recall</p> <p>14 those dates where she was out for maternity</p> <p>15 leave. There was – there were folks backing</p> <p>16 her up. I don't recall specifically who</p> <p>17 those – who those, you know, administrative</p> <p>18 assistants were, and I don't recall</p> <p>19 specifically if she was out during this time on</p> <p>20 maternity leave.</p> <p>21 I do know that that she was out for</p> <p>22 a period of time, or who knows, or she could</p> <p>23 have been on vacation that day or, you know, I</p> <p>24 don't know.</p> <p>25 Q. Switching gears now, the two</p>

<p>Page 322</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 complaints that have been filed that is against</p> <p>3 HCMFA and NexPoint, did you see any drafts of</p> <p>4 those complaints before they were filed?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question, and to the extent that you</p> <p>7 had any communications with counsel or you</p> <p>8 were shown drafts of the complaints by</p> <p>9 counsel while you were employed by</p> <p>10 Highland, I direct you not to answer.</p> <p>11 A. I – I reviewed documents yesterday</p> <p>12 with counsel here. I believe that is the first</p> <p>13 time I have ever seen those.</p> <p>14 Q. Okay. Did you ever discuss with</p> <p>15 Mr. Seery these two lawsuits before or after</p> <p>16 they were filed?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were you ever interviewed by legal</p> <p>19 counsel, to your knowledge, about these</p> <p>20 promissory notes before the complaints were</p> <p>21 filed? Without going into what was said, were</p> <p>22 you ever interviewed by legal counsel?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>	<p>Page 323</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Obviously with COVID, it changed,</p> <p>3 but – but before COVID, did you used to meet</p> <p>4 with Mr. Seery from time to time in-person?</p> <p>5 A. Yeah, I mean, so before COVID – so</p> <p>6 we're talking kind of late March, early April,</p> <p>7 right, there was about – I don't remember the</p> <p>8 specific date when the board for Highland was</p> <p>9 appointed. I believe it was around February of</p> <p>10 2020, so maybe there was a month-and-a-half,</p> <p>11 two-month window where we were meeting</p> <p>12 in-person or, you know, like we were actually</p> <p>13 in the office, excuse me, we were in the</p> <p>14 office.</p> <p>15 And, you know, when they were first</p> <p>16 appointed, the board members and Mr. Seery</p> <p>17 were – were definitely down here more</p> <p>18 in-person.</p> <p>19 Q. Did you ever see Mr. Seery taking</p> <p>20 written notes of – of his meetings with you or</p> <p>21 others?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall on any Zoom or video</p> <p>24 conference with Mr. Seery, seeing him take</p> <p>25 notes, written notes?</p>
<p>Page 324</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The Zoom calls we had, I don't</p> <p>3 recall having seen video or, you know, or if it</p> <p>4 was on Zoom, I just remember it being – well,</p> <p>5 no, you know what, there were some – you know,</p> <p>6 I take that back.</p> <p>7 So there were – there were some</p> <p>8 times that I did remember seeing Mr. Seery</p> <p>9 on – on some of the Zoom calls.</p> <p>10 Q. Well, let me –</p> <p>11 A. I don't – sorry, I'm thinking. I'm</p> <p>12 thinking – I'm going back. I'm trying to</p> <p>13 process this.</p> <p>14 Q. I can make it much quicker,</p> <p>15 Mr. Waterhouse. I have heard – I have heard</p> <p>16 that Mr. Seery is a copious note taker.</p> <p>17 Do you have any knowledge about</p> <p>18 that?</p> <p>19 A. No.</p> <p>20 Q. Okay. Switching gears yet again,</p> <p>21 and this will be last theme. Do you need a</p> <p>22 restroom break, or are you good to go for</p> <p>23 another half an hour?</p> <p>24 MS. DEITSCH-PEREZ: I need a</p> <p>25 restroom break.</p>	<p>Page 325</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Can we make it five</p> <p>3 minutes?</p> <p>4 THE WITNESS: Five minutes would be</p> <p>5 great.</p> <p>6 VIDEOGRAPHER: We're going off the</p> <p>7 record at 5:53 p.m.</p> <p>8 (Recess taken 5:53 p.m. to 5:59 p.m.)</p> <p>9 VIDEOGRAPHER: We are back on the</p> <p>10 record at 5:59 p.m.</p> <p>11 Q. Mr. Waterhouse, I had asked you</p> <p>12 earlier about contracts between HCMFA and the</p> <p>13 debtor, and now I'm going to talk about</p> <p>14 contracts between the debtor and NexPoint</p> <p>15 Advisors. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, were there contracts similar to</p> <p>18 the ones with HCMFA that NexPoint had in the</p> <p>19 nature of employee reimbursement and shared</p> <p>20 services?</p> <p>21 A. Yes, they – NexPoint Advisors and</p> <p>22 Highland Capital Management Fund Advisors had</p> <p>23 cost reimbursement and shared services</p> <p>24 agreements with Highland Capital Management,</p> <p>25 L.P.</p>

<p>Page 326</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that shared services</p> <p>3 agreement, to the best of your understanding,</p> <p>4 in place as of December 31, 2020?</p> <p>5 A. It was – it was terminated at some</p> <p>6 point, and I remember the contracts had</p> <p>7 different termination dates, but I think the –</p> <p>8 the date of termination was January 31st of</p> <p>9 2021, after the termination was put in.</p> <p>10 So yeah, it would be in place at the</p> <p>11 end of the year of December – it would be in</p> <p>12 place at December 31st, 2020.</p> <p>13 Q. And pursuant to that agreement as of</p> <p>14 December 31st, 2020, was the debtor providing</p> <p>15 what you would describe as back office services</p> <p>16 to NexPoint?</p> <p>17 A. Yes.</p> <p>18 Q. Would those have included accounting</p> <p>19 services?</p> <p>20 A. Yes.</p> <p>21 Q. And as part of those accounting</p> <p>22 services, would the debtor have assisted</p> <p>23 NexPoint with paying its bills?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 327</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. So let's break that up. You were a</p> <p>4 treasurer of NexPoint as well in December of</p> <p>5 2020?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And in December of 2020, did</p> <p>10 NexPoint have its own bank accounts?</p> <p>11 A. Yes.</p> <p>12 Q. And did it use those bank accounts</p> <p>13 to pay various of its obligations?</p> <p>14 A. Yes.</p> <p>15 Q. Did employees of the debtor have the</p> <p>16 ability to cause transfers to be made from</p> <p>17 those bank accounts on behalf of NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. And is that one of services that the</p> <p>20 debtor provided NexPoint, basically ensuring</p> <p>21 that accounts payable and other obligations</p> <p>22 would be paid?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p>Page 328</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. You answered yes?</p> <p>3 A. Yes.</p> <p>4 Q. And the payments, though, whose</p> <p>5 funds would they be made from?</p> <p>6 A. From the bank account of NexPoint</p> <p>7 Advisors. If they were NexPoint advisor</p> <p>8 obligations, it would be made from NexPoint</p> <p>9 Advisors' bank account.</p> <p>10 Q. So let's pull up Exhibit Alpha 1.</p> <p>11 You should have that – it is my Tab 1 or my</p> <p>12 Exhibit 1.</p> <p>13 (Exhibit A1 marked.)</p> <p>14 Q. So this is a – this is a series of</p> <p>15 emails, Mr. Waterhouse. Let's look at the</p> <p>16 first page here, November 25, 2020, between</p> <p>17 Kristin Hendrix and yourself.</p> <p>18 Do you see that, sir?</p> <p>19 A. I do.</p> <p>20 Q. And do you see where Ms. Hendrix</p> <p>21 writes: NPA.</p> <p>22 Do you know what NPA stood for?</p> <p>23 A. Yes.</p> <p>24 Q. And what does it stand for?</p> <p>25 A. NexPoint Advisors.</p>	<p>Page 329</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that how you-all internally</p> <p>3 at Highland refer to NexPoint Advisors, L.P.?</p> <p>4 A. I mean, yes, amongst other things.</p> <p>5 Q. And she writes at the bottom of her</p> <p>6 email: Okay to release?</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. So what –</p> <p>10 MR. MORRIS: Hold on one second.</p> <p>11 Okay. Go ahead.</p> <p>12 MR. RUKAVINA: Yeah.</p> <p>13 Q. So what is – what is Ms. Hendrix</p> <p>14 here on November 25 asking of you?</p> <p>15 A. She is asking me – so she – these</p> <p>16 are – these are payments – typically we would</p> <p>17 do an accounts payable run every week at the</p> <p>18 end of every Friday. But looking at this date,</p> <p>19 it is Wednesday, November 25th, which means, to</p> <p>20 me, it is likely Thanksgiving weekend.</p> <p>21 So this is the day before</p> <p>22 Thanksgiving, so this is the last kind of –</p> <p>23 kind of day before the holidays and vacation</p> <p>24 and things of that nature. So it is</p> <p>25 effectively the Friday of that week.</p>

<p>Page 330</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 So she is – she is putting in all</p> <p>3 the payments for the week because we batch</p> <p>4 payments weekly. And these are the payments</p> <p>5 that go out that week, and she is informing me</p> <p>6 of the payments and – you know, again, at the</p> <p>7 bottom of the email, she is asking for my okay</p> <p>8 to – to release these payments in the wire</p> <p>9 system.</p> <p>10 Q. So these would be accounts payable</p> <p>11 of NexPoint?</p> <p>12 A. I mean, it would be accounts payable</p> <p>13 for all of these entities listed on this email.</p> <p>14 Q. And who was Ms. Hendrix employed by</p> <p>15 in November and December of 2020?</p> <p>16 A. Highland Capital Management.</p> <p>17 Q. Okay. So – so part of the services</p> <p>18 that NexPoint had contracted with was for</p> <p>19 Highland to ensure that NexPoint timely paid</p> <p>20 its accounts payable; is that accurate?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question. You have got to be</p> <p>23 kidding me.</p> <p>24 Q. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 331</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did NexPoint rely on employees</p> <p>3 of the debtor to ensure that NexPoint's</p> <p>4 accounts payable were timely paid?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes.</p> <p>8 MR. RUKAVINA: Let's flip to the</p> <p>9 next page, Mr. Nguyen, if you will please</p> <p>10 scroll to the next page.</p> <p>11 Q. So this is an email similar to the</p> <p>12 prior one, November 30th.</p> <p>13 Do you see where it says, NPA HCMFA,</p> <p>14 USD \$325,000 one-day loan?</p> <p>15 Do you see that, sir?</p> <p>16 A. I do.</p> <p>17 Q. Do you have any memory of what that</p> <p>18 was?</p> <p>19 A. I don't recall what that – what</p> <p>20 that payment was for.</p> <p>21 Q. Did it sometimes occur that one</p> <p>22 advisor would, on very short-terms, make loans</p> <p>23 to another advisor?</p> <p>24 A. Yes. This – this – this occurred</p> <p>25 from – from – from time to time. It actually</p>
<p>Page 332</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 looking at – I'm – I'm looking at the date of</p> <p>3 this email. It is November 30th. It is the</p> <p>4 last day of the month.</p> <p>5 HCMFA has obligations it needs to</p> <p>6 pay to its broker-dealer, which is HCFD. And</p> <p>7 it likely was short funds to make those</p> <p>8 obligations under that – under its agreement,</p> <p>9 and so it provided a one-day loan because on</p> <p>10 the next business day on 12/1 – or the next</p> <p>11 business day in December, it would receive</p> <p>12 management fees from the underlying funds that</p> <p>13 it managed and it would be able to pay back</p> <p>14 that loan to NexPoint Advisors.</p> <p>15 Q. So – so here Ms. Hendrix was</p> <p>16 seeking your approval to transfer \$325,000 from</p> <p>17 NexPoint to HCMFA for a one-day loan; is that</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Let's flip to the next page, sir.</p> <p>21 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>22 you will please scroll down.</p> <p>23 Q. Now we have as an entry for</p> <p>24 \$325,000, 11/30 loan payment.</p> <p>25 Do you see that, sir?</p>	<p>Page 333</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And that is probably the loan that</p> <p>4 was approved on the prior page?</p> <p>5 A. Yes, most likely.</p> <p>6 Q. So is it also true, sir, that in</p> <p>7 addition to accounts payable debtor employees</p> <p>8 would be assisting NexPoint with respect to</p> <p>9 paying back its debt?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I mean, yes, for loans of this</p> <p>13 nature, yes.</p> <p>14 Q. Well, what about long term loans?</p> <p>15 Was it reasonable for NexPoint to expect debtor</p> <p>16 employees to ensure that NexPoint timely paid</p> <p>17 its obligations under long-term notes?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I mean, that is one of the things</p> <p>22 that the Highland personnel did provide to the</p> <p>23 advisors. Yes, we would – we would – over</p> <p>24 the years, yes, we – we – we – we did do</p> <p>25 that generally. Again, I don't remember</p>



<p>Page 334</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically but, yes, generally we – you</p> <p>3 know, we did do that.</p> <p>4 Q. So do you recall – and we can pull</p> <p>5 it up, if need be – that under the NexPoint</p> <p>6 note that Mr. Morris asked you about earlier,</p> <p>7 the one for more than \$30 million, that</p> <p>8 NexPoint was obligated to make an annual</p> <p>9 payment of principal and interest?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yes, it was – yes, it – it was an</p> <p>13 amortizing note. It was – you know, from what</p> <p>14 we reviewed earlier, it was payable by</p> <p>15 December 31st of each year. So – but are –</p> <p>16 are you asking me –</p> <p>17 Q. I'm just asking you, sir, if you</p> <p>18 recall the note.</p> <p>19 A. Yes, the \$30 million note, yes, we</p> <p>20 reviewed it earlier, yes.</p> <p>21 Q. And do you recall Mr. Morris had you</p> <p>22 go through the fact that NexPoint had made</p> <p>23 payments in years prior to 2020 on that note?</p> <p>24 A. I do.</p> <p>25 Q. And do you believe that employees of</p>	<p>Page 335</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the debtor would have played any role in</p> <p>3 NexPoint having made those prior payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Yes.</p> <p>7 Q. And what role in years prior to 2020</p> <p>8 would employees of the debtor have had with</p> <p>9 respect to NexPoint making that annual payment?</p> <p>10 A. We – we – we would have – I keep</p> <p>11 saying "we." The team would have calculated</p> <p>12 any amounts due under that loan and other</p> <p>13 loans, as – as standard course.</p> <p>14 We would – since we provided</p> <p>15 treasury services to the advisors, we would</p> <p>16 inform the – the – the – we informed</p> <p>17 Mr. Dondero of any cash obligations that are</p> <p>18 forthcoming, whether we do cash projections.</p> <p>19 If, you know, any of these payments</p> <p>20 would have – or, you know, the sum total of</p> <p>21 all of these payments, including any note</p> <p>22 payments, if there were any cash shortfalls, we</p> <p>23 would have informed Mr. Dondero of any cash</p> <p>24 shortfalls. We could adequately plan, you</p> <p>25 know, in instances like that.</p>
<p>Page 336</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Or, sorry, we – I say "we" – I</p> <p>3 keep saying "we" – I keep wearing my – again,</p> <p>4 my – my treasurer hat.</p> <p>5 But, yes, it is to – it is to</p> <p>6 inform Mr. Dondero of the obligations of the</p> <p>7 advisors in terms of cash and obligations that</p> <p>8 are – are upcoming and that – and that are –</p> <p>9 are scheduled to be paid.</p> <p>10 Q. And would those obligations that are</p> <p>11 upcoming and scheduled to be paid prior to 2020</p> <p>12 have incurred the annual payment on that</p> <p>13 NexPoint \$30 million note?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Davor, I think</p> <p>16 you misspoke. You might want to just</p> <p>17 repeat the question.</p> <p>18 Q. Okay. Let me repeat the question,</p> <p>19 sir.</p> <p>20 Prior to 2020, those services that</p> <p>21 you just described, would that – on behalf of</p> <p>22 the debtor, would that have included NexPoint's</p> <p>23 payments on the \$30 million note?</p> <p>24 A. Yes.</p> <p>25 Q. So someone at the debtor in treasury</p>	<p>Page 337</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 or accounting would have sent some schedule or</p> <p>3 a reminder that a payment would be coming due</p> <p>4 in the future. Is that generally the practice?</p> <p>5 A. Yes, we would – you know, again, I</p> <p>6 didn't – I didn't micromanage the teams, but</p> <p>7 we had a – a corporate accounting calendar</p> <p>8 that we use as kind of a tickler file to keep</p> <p>9 track of payments.</p> <p>10 I actually, you know, don't know how</p> <p>11 actively they're using that in – in prior to</p> <p>12 2020, but it was actively used at some point.</p> <p>13 We did look at NexPoint cash</p> <p>14 periodically and cash for the other advisors as</p> <p>15 well and payments. You know, we – payments</p> <p>16 like this would have appeared in our cash</p> <p>17 projections, in the advisor's cash projections.</p> <p>18 And, again, as like I said earlier,</p> <p>19 they would have appeared there, so there would</p> <p>20 be time to plan for making any of these</p> <p>21 payments.</p> <p>22 Q. And based on your experience, would</p> <p>23 it have been reasonable for NexPoint to rely on</p> <p>24 the debtors' employees to inform NexPoint of an</p> <p>25 upcoming payment due on the \$30 million</p>

<p>Page 338</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory note?</p> <p>3 MR. MORRIS: Objection to form of</p> <p>4 the question.</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. Yes, they did. I mean, but I</p> <p>7 mean, but I don't think these – these notes</p> <p>8 were any secret to anybody.</p> <p>9 Q. I understand, and I'm not suggesting</p> <p>10 otherwise.</p> <p>11 MR. RUKAVINA: Please pull up Alpha</p> <p>12 2, Mr. Nguyen.</p> <p>13 (Exhibit A2 marked.)</p> <p>14 Q. Now, this document is similar to the</p> <p>15 ones we've seen before as of December 31, 2020,</p> <p>16 and I don't see under NTA anything there for</p> <p>17 paying the promissory note to Highland.</p> <p>18 Do you see anything like that?</p> <p>19 A. I do not.</p> <p>20 MR. RUKAVINA: You can pull that –</p> <p>21 that exhibit down, Mr. Nguyen.</p> <p>22 Q. You are aware, of course, by now</p> <p>23 that, in fact, NexPoint failed to make the</p> <p>24 payment due December 31, 2020, are you not?</p> <p>25 A. I am aware, and yes, I do understand</p>	<p>Page 339</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it.</p> <p>3 Q. Were you aware that Highland</p> <p>4 accelerated that \$30 million promissory note?</p> <p>5 A. I am aware.</p> <p>6 Q. Were you aware of that acceleration</p> <p>7 at the time that it occurred?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. Do you recall whether anyone asked</p> <p>10 you – prior to the acceleration, anyone asked</p> <p>11 you at Highland, what Highland should do with</p> <p>12 respect to the missed payment?</p> <p>13 A. Did anyone ask me what Highland</p> <p>14 should do about the missed payment?</p> <p>15 Q. Yes, before acceleration.</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. I mean, what – what I recall is</p> <p>19 there was the – sorry, are you asking me –</p> <p>20 MS. DANDENEAU: Why don't you just</p> <p>21 repeat the question, Mr. Rukavina.</p> <p>22 Q. Let me try again, Mr. Waterhouse,</p> <p>23 let me try again.</p> <p>24 I am saying you're the CFO of</p> <p>25 someone, in this case, Highland, and the</p>
<p>Page 340</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 borrower failed to make the required payment.</p> <p>3 Are you with me so far?</p> <p>4 A. I am.</p> <p>5 Q. Did anyone then ask you, what should</p> <p>6 we do with respect to our rights against the</p> <p>7 borrower that missed the payment?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you play a role in the decision</p> <p>10 to accelerate that \$30 million promissory note?</p> <p>11 A. I did not.</p> <p>12 Q. Do you recall whether Mr. Seery ever</p> <p>13 asked you before the acceleration as to whether</p> <p>14 he should accelerate the note?</p> <p>15 A. I don't recall.</p> <p>16 Q. And you don't recall when you</p> <p>17 learned of the acceleration itself?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of that question.</p> <p>20 A. It was – it was sometime in</p> <p>21 early – in early 2021. I don't remember</p> <p>22 specifically.</p> <p>23 Q. But do you recall whether it was</p> <p>24 after the acceleration had already been</p> <p>25 transmitted?</p>	<p>Page 341</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form of the question.</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall in early to mid</p> <p>6 January of 2021, after the default, discussing</p> <p>7 the default with Mr. Dondero?</p> <p>8 A. I do recall discussing with</p> <p>9 Mr. Dondero after December 31, 2020?</p> <p>10 Q. Yes, the fact of the default.</p> <p>11 A. I don't recall.</p> <p>12 MR. RUKAVINA: Let's pull up my</p> <p>13 Exhibit 6, Alpha 6.</p> <p>14 (Exhibit A6 marked.)</p> <p>15 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>16 you will please scroll down.</p> <p>17 Q. This email chain begins with you</p> <p>18 writing to Ms. Hendrix on January the 12th:</p> <p>19 NexPoint note to HCMLP.</p> <p>20 Do you see that, sir?</p> <p>21 A. I do.</p> <p>22 Q. Were you discussing this same</p> <p>23 \$30 million note we're talking about right now</p> <p>24 with Ms. Hendrix?</p> <p>25 A. Yes.</p>

<p>Page 342</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you recall what prompted</p> <p>3 you to send that email to her?</p> <p>4 A. Yes, I had -- I had a conversation</p> <p>5 with Jim.</p> <p>6 Q. Okay. And what -- what did you</p> <p>7 discuss with Jim that led to this email chain?</p> <p>8 A. He -- he called me and he said he</p> <p>9 wanted to make payment on the NexPoint note,</p> <p>10 and I didn't -- I didn't know the -- the amount</p> <p>11 offhand, so I reached out to Kristin and got</p> <p>12 the details and relayed that to him.</p> <p>13 Q. And you see you sent that email to</p> <p>14 her at 11:15 a.m. Does that help you remember</p> <p>15 when you had this discussion with Mr. Dondero?</p> <p>16 In other words, was it that morning or the day</p> <p>17 before, or can you -- can you --</p> <p>18 A. No, it was -- it was that morning.</p> <p>19 Q. And do you recall how you had that</p> <p>20 conversation with him?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 Q. By telephone, by email, in-person?</p> <p>24 A. Yeah, he -- he called me. I was at</p> <p>25 home. We were working from home here in</p>	<p>Page 343</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 December of 2020. He called me from home. He</p> <p>3 said he was in court. He wanted to -- he asked</p> <p>4 about, you know, making payment on the note and</p> <p>5 the amount, and so I didn't have those numbers</p> <p>6 in front of me, so I said I would get back to</p> <p>7 him. I wanted all the details, so here is</p> <p>8 this -- so I reached out to Kristin.</p> <p>9 Q. And then she gave you that</p> <p>10 \$1,406,000 figure?</p> <p>11 MR. RUKAVINA: Mr. Nguyen, if you</p> <p>12 will scroll up, please.</p> <p>13 A. Yes. Yeah, she -- the \$1,406,112.</p> <p>14 Q. And do you recall whether you</p> <p>15 conveyed that amount to Mr. Dondero?</p> <p>16 A. Yes. I -- I called him back and</p> <p>17 gave him -- gave him this amount.</p> <p>18 Q. Are you aware of whether NexPoint,</p> <p>19 in fact, then made that 1 million 406 and</p> <p>20 change payment?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Did you discuss with Mr. Dondero at</p> <p>23 that time, either the first conference or the</p> <p>24 second conference that day -- strike that.</p> <p>25 When you conveyed the number to</p>
<p>Page 344</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, was -- was it also on January</p> <p>3 12th?</p> <p>4 A. Sorry, when I conveyed the</p> <p>5 \$1.4 million number?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, yes, it was that -- it was --</p> <p>8 Q. So you had --</p> <p>9 A. It was that point.</p> <p>10 Q. Well, to the best of your</p> <p>11 recollection, you had a conference with</p> <p>12 Mr. Dondero by the telephone in the morning,</p> <p>13 and then another conference with him by</p> <p>14 telephone after 11:40 a.m. that morning?</p> <p>15 A. Yeah, I can't remember -- yeah, it</p> <p>16 was either that morning or it could have been,</p> <p>17 you know, early afternoon, but again, I</p> <p>18 remember calling him back, relaying this</p> <p>19 information to him, and he said, okay, pay --</p> <p>20 you know, make -- make this payment.</p> <p>21 Q. And during either of those two</p> <p>22 calls, did you tell Mr. Dondero anything to the</p> <p>23 effect that making those -- I'm sorry, making</p> <p>24 that payment would not de-accelerate the</p> <p>25 promissory note?</p>	<p>Page 345</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did you tell him anything to the</p> <p>4 effect that making that payment would not cure</p> <p>5 the default?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss that in any way with</p> <p>8 him?</p> <p>9 A. No, I did not.</p> <p>10 Q. Did he say why he wanted to have</p> <p>11 that \$1.4 million payment made?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. He -- he -- he didn't go into</p> <p>15 specifics.</p> <p>16 Q. Did he say anything to you to the</p> <p>17 effect that if NexPoint makes that payment,</p> <p>18 then the note will be de-accelerated?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I don't recall.</p> <p>22 MR. RUKAVINA: You can put this one</p> <p>23 down, Mr. Nguyen.</p> <p>24 Q. And, again, when you say you don't</p> <p>25 recall, you mean you don't remember right now</p>

<p>Page 346</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 either way; correct?</p> <p>3 A. Yeah, I don't remember. I don't</p> <p>4 remember us discussing that.</p> <p>5 Q. Now – and we're almost done, I</p> <p>6 promise. I'm just going to – I don't know how</p> <p>7 to ask this question, so I'm just going to try</p> <p>8 to do my best.</p> <p>9 Prior to the default on December 31,</p> <p>10 2020, did Mr. Seery ever tell you any words to</p> <p>11 the effect that you or someone at Highland</p> <p>12 should ensure that NexPoint doesn't make its</p> <p>13 payment?</p> <p>14 A. No.</p> <p>15 Q. Did you have any hint or any belief</p> <p>16 that anyone at NexPoint – I'm sorry, strike</p> <p>17 that.</p> <p>18 Did you have any reason to believe</p> <p>19 that anyone with Highland was actively trying</p> <p>20 to get NexPoint to make that default by not</p> <p>21 paying on December 31?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Are you asking, did any Highland</p> <p>25 employees actively work to make – to</p>	<p>Page 347</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 somehow –</p> <p>3 Q. Yes. Let me take a step back. Let</p> <p>4 me take a step back.</p> <p>5 So you are aware now that as a</p> <p>6 result of that default, what was still some</p> <p>7 25-year note was accelerated and became</p> <p>8 immediately due. You are aware of that now;</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And can you see how someone at</p> <p>12 Highland might actually have been pleased with</p> <p>13 that development?</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. Not that they were – not that they</p> <p>16 were pleased, but you can see how someone at</p> <p>17 Highland might have been pleased with that</p> <p>18 development?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 MS. DANDENEAU: Object to form.</p> <p>22 A. I don't know how they would have</p> <p>23 reacted to that.</p> <p>24 Q. Okay. But you're not – you're not</p> <p>25 aware of any instructions or any actions being</p>
<p>Page 348</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 given or taken at Highland by Mr. Seery, the</p> <p>3 independent board, DSI, that – that would have</p> <p>4 basically led Highland to ensure that NexPoint</p> <p>5 would fail to make that payment?</p> <p>6 A. I'm not aware.</p> <p>7 Q. In other words, there wasn't a trick</p> <p>8 or a settlement; right?</p> <p>9 MS. DEITSCH-PEREZ: Objection to</p> <p>10 form.</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 MR. MORRIS: Object to form.</p> <p>13 A. I'm not aware.</p> <p>14 Look, I'm not aware. I'm not in</p> <p>15 every conversation. I mean, and I'm just –</p> <p>16 again, I'm sitting at home. It is the end of</p> <p>17 the year. Again, I'm not aware.</p> <p>18 Q. That is a perfectly legitimate</p> <p>19 answer. I don't know why – why you think</p> <p>20 otherwise.</p> <p>21 Okay. Just give me one second to</p> <p>22 compose my thoughts.</p> <p>23 MS. DEITSCH-PEREZ: While you're</p> <p>24 taking your one second, why don't we take</p> <p>25 three minutes. I will be right back.</p>	<p>Page 349</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. RUKAVINA: Yes.</p> <p>5 VIDEOGRAPHER: All right. We're</p> <p>6 going off the record at 6:27 p.m.</p> <p>7 (Recess taken 6:27 p.m. to 6:30 p.m.)</p> <p>8 VIDEOGRAPHER: We are back on the</p> <p>9 record at 6:30 p.m.</p> <p>10 MR. HORN: Is Deb back?</p> <p>11 MS. DANDENEAU: Are you asking about</p> <p>12 me? I'm here.</p> <p>13 MR. HORN: Oh, okay. I don't see</p> <p>14 you, sorry.</p> <p>15 Q. Actually, yeah, Mr. Waterhouse, so</p> <p>16 when you had –</p> <p>17 MS. DANDENEAU: Are you asking about</p> <p>18 Deb Dandeneau or Deborah? I mean, there</p> <p>19 are a lot – as we talked about, a lot of</p> <p>20 Debs. I'm here.</p> <p>21 MS. DEITSCH-PEREZ: I'm here.</p> <p>22 MR. HORN: Yes, I was asking about</p> <p>23 DDP.</p> <p>24 MS. DEITSCH-PEREZ: Oh, DDP is here.</p> <p>25 MR. HORN: Okay. Here we go. I'm</p>

<p>Page 350</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 going back on mute.</p> <p>3 MS. DANDENEAU: Get the right</p> <p>4 nomenclature.</p> <p>5 Q. Mr. Waterhouse, on January 12th,</p> <p>6 2021, when you had those talks with Mr. Dondero</p> <p>7 about the \$1.4 million payment, did you have a</p> <p>8 communication or a conversation with Mr. Seery</p> <p>9 about that payment after January 12th, 2021?</p> <p>10 A. I don't recall.</p> <p>11 Q. Well, in response to Mr. Dondero</p> <p>12 reaching out to you, do you recall on that day,</p> <p>13 January 12th, talking to Mr. Seery or anyone at</p> <p>14 Highland other than the email chain we just saw</p> <p>15 about Mr. Dondero's call with you?</p> <p>16 A. Did I talk to – I spoke with</p> <p>17 Kristin – I don't know if I spoke to her. I</p> <p>18 likely spoke to Kristin Hendrix because we had</p> <p>19 to get the wire on NexPoint's behalf to make</p> <p>20 the payment to Highland.</p> <p>21 Q. So it is true, then, that – that</p> <p>22 employees of the debtor did actually cause that</p> <p>23 payment to be made when it was made after</p> <p>24 January 12th?</p> <p>25 A. Yes, I mean, we – we – as I</p>	<p>Page 351</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 testified earlier, we provided that accounting</p> <p>3 finance treasury function as – under the</p> <p>4 shared services agreement. And so once I</p> <p>5 got the – I talked to Jim, got the approval to</p> <p>6 make this payment, we have to then make the</p> <p>7 payment, or the team does, and so the payment</p> <p>8 was made.</p> <p>9 Q. Okay. But – okay. And – and</p> <p>10 sitting here right now, after Jim called you,</p> <p>11 you don't remember talking to anyone other than</p> <p>12 the – the couple of people you mentioned,</p> <p>13 talking to anyone about something to the effect</p> <p>14 that, hey, Jim wants to make this payment now?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't – I don't recall.</p> <p>18 Q. And does that include legal counsel?</p> <p>19 Without going into any detail, on</p> <p>20 January 12th or before that payment was made,</p> <p>21 did you consult with legal counsel about</p> <p>22 anything having to do with the \$1.4 million</p> <p>23 payment?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Thank you, sir, for your</p>
<p>Page 352</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time.</p> <p>3 MR. RUKAVINA: Pass the witness.</p> <p>4 MR. MORRIS: I just have a few</p> <p>5 questions, if I may.</p> <p>6 MS. DEITSCH-PEREZ: Don't you go at</p> <p>7 the end?</p> <p>8 MR. MORRIS: Oh, I apologize. He is</p> <p>9 your witness. I'm surprised you want to</p> <p>10 ask him questions, but go right ahead.</p> <p>11 MS. DEITSCH-PEREZ: Just have a</p> <p>12 couple of things.</p> <p>13 MR. RUKAVINA: And I will just</p> <p>14 object to that, that he's our witness.</p> <p>15 That's not –</p> <p>16 MR. MORRIS: I'm not talking to you.</p> <p>17 I'm not talking to you.</p> <p>18 MS. DANDENEAU: Also, Mr. Morris, it</p> <p>19 is – it is –</p> <p>20 MS. DEITSCH-PEREZ: He is not my</p> <p>21 witness. He's been subpoenaed by you.</p> <p>22 Okay?</p> <p>23 That is no offense, Mr. Waterhouse,</p> <p>24 I'm – I'm not – okay. Anyway.</p> <p>25 EXAMINATION</p>	<p>Page 353</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 BY MS. DEITSCH-PEREZ:</p> <p>3 Q. Good evening. I'm very sorry to be</p> <p>4 going last and I know you have had a long and</p> <p>5 taxing day, so I thank you for indulging me.</p> <p>6 The kinds of services that you</p> <p>7 describe that the – that Highland provided for</p> <p>8 NexPoint, did Highland also provide similar</p> <p>9 services to that to HCRE and HCMS?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 Q. What kind of services did Highland</p> <p>14 provide to HCRE and HCMS?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 MS. DEITSCH-PEREZ: What is your</p> <p>18 objection, John?</p> <p>19 MR. MORRIS: It is vague and</p> <p>20 ambiguous. Unlike the advisors and</p> <p>21 NexPoint, they actually had shared services</p> <p>22 agreements.</p> <p>23 MS. DEITSCH-PEREZ: I got – I</p> <p>24 understand your objection. That is fine.</p> <p>25 Q. Let's take them one at a time.</p>



<p>Page 354</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 What kinds of services did Highland</p> <p>3 provide to HCRE?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. HCMS, Highland employees provided</p> <p>7 accounting services, treasury management</p> <p>8 services, potentially legal services. I</p> <p>9 don't – but I wouldn't have been directly</p> <p>10 involved in that. But as far as the teams that</p> <p>11 I manage, it was accounting, treasury, things</p> <p>12 of that nature.</p> <p>13 Q. Okay. And that was for HCM, LLP –</p> <p>14 A. And – and, sorry, it would also be</p> <p>15 any asset valuation if needed as well.</p> <p>16 Q. Okay. We went back and forth on</p> <p>17 each other and I apologize, so just to clarify.</p> <p>18 You were talking about the services</p> <p>19 that Highland Capital Management provided to</p> <p>20 HCMS; is that right?</p> <p>21 A. HCMS. So, again, yes. And</p> <p>22 accounting, treasury, valuation, and also tax</p> <p>23 services too.</p> <p>24 Q. Okay.</p> <p>25 A. Tax services. Look, I'm expanding</p>	<p>Page 355</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this, their HR services as well.</p> <p>3 Q. Okay. And did that include bill</p> <p>4 paying?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 Q. Did the services that HCM provided</p> <p>8 to HCMS include bill paying?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes.</p> <p>12 Q. And did the services that HCMLP</p> <p>13 provided to HCMS include scheduling upcoming</p> <p>14 bills?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. And did HCMLP regularly pay – cause</p> <p>19 to be paid the payments on loans HCMS had from</p> <p>20 HCMLP?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Yes.</p> <p>24 Q. Typically – if there is a</p> <p>25 typically, how far in advance of due dates did</p>
<p>Page 356</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMLP cause HCMS to pay its bills?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I mean, it – it – it depend – it</p> <p>6 depended on the nature of the payment and the</p> <p>7 vendor, but, you know, if there were – if</p> <p>8 there were larger scheduled payments, you know,</p> <p>9 I would like to give at least 30 days notice.</p> <p>10 And that is – that is kind of my</p> <p>11 rule of thumb so no one is surprised.</p> <p>12 Q. Okay. And was it generally HCMLP's</p> <p>13 practice to timely pay HCMS' bills?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It – it – it – that depended on</p> <p>17 the nature of the payment.</p> <p>18 Q. Okay. And can you explain what you</p> <p>19 mean by that?</p> <p>20 A. Yeah, I mean if – if it was – I</p> <p>21 mean – if there was some professional fees</p> <p>22 that weren't – you know, they were due but</p> <p>23 they weren't urgent, those fees may not be paid</p> <p>24 as timely as others that have a due date or –</p> <p>25 or things like that.</p>	<p>Page 357</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are loan payments the kinds</p> <p>3 of thing that HCMLP would pay on time because</p> <p>4 of potential consequences of not paying on</p> <p>5 time?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes. As I testified earlier, we</p> <p>9 would want to give, you know, notice on – on</p> <p>10 – on larger payments and – and things of that</p> <p>11 nature so we didn't miss due dates.</p> <p>12 Q. Okay. And over the course of time,</p> <p>13 did HCMLP generally pay HCMS' loan payments in</p> <p>14 a timely fashion?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I can't remember specifically, but</p> <p>18 generally, yes.</p> <p>19 Q. Okay. Now, did HCMLP provide</p> <p>20 similar services to HCRE that you have</p> <p>21 described it provided to HCMS?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, but I don't think it – it</p> <p>25 provided – I don't think it provided HR</p>

<p>Page 358</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 services.</p> <p>3 Q. Can you describe the accounting and</p> <p>4 treasury services that HCMLP provided for HCRE?</p> <p>5 A. Yeah, it – it would provide</p> <p>6 bookkeeping services on a – on a periodic</p> <p>7 basis. It would make payments, you know, as</p> <p>8 needed.</p> <p>9 Q. Okay. So did it provide –</p> <p>10 A. And – and I believe it – it – it</p> <p>11 provided tax services as well.</p> <p>12 Q. Okay. And so did it provide the</p> <p>13 same kind of bill – did HCMLP provide the same</p> <p>14 kind of bill-paying services for HCRE that it</p> <p>15 provided for HCMS and NexPoint?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Yes.</p> <p>19 Q. And over the course of time, did</p> <p>20 HCMLP generally cause to be made the loan</p> <p>21 payments that HCRE owed to HCMLP?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes.</p> <p>25 Q. Did HCMLP make loan payment – the</p>	<p>Page 359</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan payment that was due from HCMS to HCMLP in</p> <p>3 December of 2020?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I don't believe that payment –</p> <p>7 payment was made.</p> <p>8 Q. Okay. And when HCMLP caused HCMS in</p> <p>9 the past to make loan payments, whose money did</p> <p>10 it use to make those payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. It was the – the money in HCMS's</p> <p>14 operating account would be made to that –</p> <p>15 those moneys would be used to make payment to</p> <p>16 Highland Capital Management.</p> <p>17 Q. Okay. And Highland – is it correct</p> <p>18 that Highland Capital Management personnel had</p> <p>19 the access to HCMS's accounts to be able to</p> <p>20 cause such payments to be made?</p> <p>21 A. Yes, Highland personnel had access</p> <p>22 to those accounts.</p> <p>23 Q. Okay. And so now for HCRE, whose</p> <p>24 money was used when HCMLP caused HCRE</p> <p>25 payments – loan payments to Highland to be</p>
<p>Page 360</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 made?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. It was – it was cash in HCRE's bank</p> <p>6 account that would be used to make payments to</p> <p>7 Highland Capital Management.</p> <p>8 Q. Okay. And so did Highland Capital</p> <p>9 Management have access to HCRE's funds in order</p> <p>10 to be able to make such payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Personnel at Highland Capital</p> <p>14 Management had access to HCRE's bank account to</p> <p>15 effectuate the payments.</p> <p>16 Q. Okay. And was the payment due from</p> <p>17 HCRE to HCMLP due in December of 2020 made?</p> <p>18 A. It –</p> <p>19 Q. In December of 2020.</p> <p>20 A. It was not.</p> <p>21 Q. Okay. And was there money in HCRE's</p> <p>22 account that would have enabled the payment to</p> <p>23 be made had HCM personnel attempted to make the</p> <p>24 payment?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 361</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I – I don't recall.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that either HCRE or HCMS simply didn't have the</p> <p>6 funds on hand to make the December 2020</p> <p>7 payments?</p> <p>8 A. I don't know.</p> <p>9 Q. I guess I'm asking, do you have any</p> <p>10 reason to believe that they didn't have the</p> <p>11 funds?</p> <p>12 A. We managed cash for so many</p> <p>13 different entities and funds, and I don't</p> <p>14 recall, you know, where the cash position was</p> <p>15 for HCRE and HCMS at 12/31/2020.</p> <p>16 Q. Okay.</p> <p>17 A. I just don't recall, and I don't –</p> <p>18 and I don't remember what the loan payment</p> <p>19 obligations were from HCRE to Highland, and</p> <p>20 from HCMS to Highland. I don't recall. I</p> <p>21 don't recall, I mean...</p> <p>22 Q. Let me come at it a different way.</p> <p>23 Were the – were the payments that would</p> <p>24 otherwise have been due in December of 2020</p> <p>25 made in January of 2021 for HCMS and HCRE?</p>

<p>Page 362</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe the HCRE payment was made</p> <p>3 in January of 2021. I don't recall any</p> <p>4 payments being made from HCMS to Highland.</p> <p>5 Q. If it – how is it the HCRE payment</p> <p>6 came to be made? Why did you make it – why</p> <p>7 did HCM make the payment in January of 2021?</p> <p>8 A. Jim – Jim called me and instructed</p> <p>9 me to – to make the payment on behalf of HCRE,</p> <p>10 Jim Dondero – Jim Dondero.</p> <p>11 Q. Did he seem upset that – that the</p> <p>12 payment had not been made?</p> <p>13 A. Yeah. On the note that was, you</p> <p>14 know, that was the term note, yes, he – he was</p> <p>15 displeased that the – that the payment had not</p> <p>16 been made by year-end.</p> <p>17 Q. Okay. And did you make the – cause</p> <p>18 the payment to be made as – as requested?</p> <p>19 A. Yes.</p> <p>20 Q. And did anyone else from HCM</p> <p>21 participate with you in causing the payment to</p> <p>22 be made to – on the HCRE loan?</p> <p>23 A. Yes. It would have been Kristin</p> <p>24 Hendrix. I – again, I don't – as I testified</p> <p>25 earlier, I'm not an officer of HCRE. I don't</p>	<p>Page 363</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 believe I'm an authorized signer. So I</p> <p>3 can't – other personnel have to make payment</p> <p>4 from HCRE to – to – to – to Highland.</p> <p>5 Q. Okay. And in the conversation</p> <p>6 that – that you had with Mr. Dondero when he</p> <p>7 requested the payment to be made, did you say</p> <p>8 to him words to the effect, Jim, this loan is</p> <p>9 going to stay in default, what are you making</p> <p>10 the payment for, anything like that?</p> <p>11 A. No.</p> <p>12 Q. In fact, did you have the impression</p> <p>13 from him that he thought that the loan would</p> <p>14 be – the default would be cured by making the</p> <p>15 payment?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Did I get the impression from Jim</p> <p>19 Dondero that the loan would be cured if the</p> <p>20 payment from HCRE –</p> <p>21 Q. Yeah, if that is what he thought.</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. I didn't get any impression from him</p> <p>25 on that at the time.</p>
<p>Page 364</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know whether there was an</p> <p>3 HCMS term loan that had a payment due in</p> <p>4 December of 2020?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. And so the reason you don't</p> <p>7 recall whether or not there was a payment in</p> <p>8 January of 2021 is because you just don't</p> <p>9 remember whether there was such a loan at all?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't remember. There is – there</p> <p>13 is so many notes, and I mean, demands, and I</p> <p>14 don't – I don't remember. It's a lot to keep</p> <p>15 track in your head.</p> <p>16 Q. I understand, and – and I hear your</p> <p>17 frustration when you have explained that the</p> <p>18 debtor has your documents and you don't, and so</p> <p>19 I fully appreciate it, and this is no knock on</p> <p>20 you. It's a knock on somebody else on this</p> <p>21 call.</p> <p>22 MR. MORRIS: I move to strike. That</p> <p>23 was pretty obnoxious, but go ahead.</p> <p>24 Q. Okay. But so, Mr. Waterhouse, if –</p> <p>25 if a payment on the HCMS loan was made in</p>	<p>Page 365</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 January of 2021, do you think it was part of</p> <p>3 the same conversation where Jim Dondero said,</p> <p>4 hey, why didn't that get paid, please make</p> <p>5 that – get that payment done?</p> <p>6 MR. MORRIS: I object to the form of</p> <p>7 the question.</p> <p>8 A. Yes. Likely it would have been – I</p> <p>9 mean, again, I don't recall a payment being</p> <p>10 made, but, you know, again, I don't remember</p> <p>11 everything.</p> <p>12 Q. Okay. Did – at the time you were</p> <p>13 communicating with Kristin Hendrix about the</p> <p>14 payment being made, whichever payments were</p> <p>15 made in January, did she say anything to you</p> <p>16 about the payments not curing the loan</p> <p>17 defaults?</p> <p>18 A. No.</p> <p>19 Q. Okay. All right. So I'm going to</p> <p>20 take you back to very early in the deposition</p> <p>21 when Mr. Morris was asking you about the –</p> <p>22 the – the – the agreement with respect to</p> <p>23 the – the forgiveness element of the loans, so</p> <p>24 that is just to orient you.</p> <p>25 Do you remember that there was a</p>

<p>Page 366</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time that you and Mr. Dondero were</p> <p>3 communicating about potential means of</p> <p>4 resolving the Highland bankruptcy by what was</p> <p>5 colloquially referred to as a pot plan?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And can you tell me generally</p> <p>8 when that was?</p> <p>9 A. Like mid -- mid 2020, sometime in</p> <p>10 2020, mid 2020.</p> <p>11 Q. Okay. And did the process of trying</p> <p>12 to figure out what the numbers should be</p> <p>13 involve looking at what one should pay for the</p> <p>14 Highland assets?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did there come a time</p> <p>19 when you were proposing some potential numbers</p> <p>20 and Mr. Dondero said something to you like,</p> <p>21 well, why are you including payment for the</p> <p>22 related party notes, those, you know, were</p> <p>23 likely to be forgiven as part of my deferred</p> <p>24 executive compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 367</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we did have that conversation.</p> <p>4 Q. Okay. Was that conversation in</p> <p>5 connection with trying to figure out the right</p> <p>6 numbers for a pot plan?</p> <p>7 A. Yeah. I mean, it was -- it was -- I</p> <p>8 mean, Jim -- Jim would ask for, you know,</p> <p>9 most -- most recent asset values, you know, for</p> <p>10 Highland, and -- and myself and the team</p> <p>11 provided those to him, so it was in that</p> <p>12 context.</p> <p>13 Q. Okay. And does that refresh your</p> <p>14 recollection that these communications were in</p> <p>15 2020 rather than 2021?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. The -- the -- the executive</p> <p>19 compensation discussions were definitely in</p> <p>20 2020.</p> <p>21 Q. Okay. Now, did you ever make</p> <p>22 proposals that took into account Jim's comment</p> <p>23 that the notes were likely to end up forgiven</p> <p>24 as part of his compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 368</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we -- the team and myself put</p> <p>4 together, you know, asset summaries of Highland</p> <p>5 at various times for all the assets of</p> <p>6 Highland, and not including the notes.</p> <p>7 Q. Okay. And were those presentations</p> <p>8 communicated to -- to Mr. Seery?</p> <p>9 A. No. Well, look, I didn't tell -- I</p> <p>10 didn't tell Mr. Seery. I don't know what</p> <p>11 Mr. Dondero did with the information.</p> <p>12 Q. Okay.</p> <p>13 A. I did not have conversations with</p> <p>14 Mr. Seery.</p> <p>15 Q. Okay. Do you know who saw the</p> <p>16 presentations that you put together that didn't</p> <p>17 include the value of the related party notes?</p> <p>18 A. We're talking presentations -- these</p> <p>19 are -- these are Excel spreadsheets?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I don't know who -- these were given</p> <p>22 to -- to Jim Dondero. I don't know what was</p> <p>23 done with them after that.</p> <p>24 Q. Okay. You also mentioned earlier</p> <p>25 that sometime during your tenure at Highland</p>	<p>Page 369</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you knew of the practice of giving forgivable</p> <p>3 loans to executives.</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 Q. Can you -- can you tell me what you</p> <p>7 recall about that practice?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, so there were -- there were --</p> <p>11 during my tenure at Highland, there were loans</p> <p>12 or -- given to employees that were later</p> <p>13 forgiven at a future date and time.</p> <p>14 Q. Okay. And when the loans were</p> <p>15 given, did the notes, to your recollection, say</p> <p>16 anything about the potential forgiveness term?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. When you say "did the notes," did</p> <p>20 the promissory notes detail the forgiveness?</p> <p>21 Q. Yes.</p> <p>22 A. Not that I recall.</p> <p>23 Q. And until such time as whatever was</p> <p>24 to trigger the forgiveness occurred, were the</p> <p>25 notes bona fide notes as far as you were</p>

<p>Page 370</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 concerned?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. Yes, similar to – yes.</p> <p>6 Q. Okay. You were going to say similar</p> <p>7 to what?</p> <p>8 A. Mr. Morris earlier today showed</p> <p>9 notes of the financial statements about various</p> <p>10 affiliate loans. I – I – I do recall these</p> <p>11 notes because I – at that time personally</p> <p>12 worked on the – the financial statements of</p> <p>13 Highland. That was, you know, in my role as a</p> <p>14 corporate accountant.</p> <p>15 And there were – those loans</p> <p>16 were – to the partners were detailed in the</p> <p>17 notes to the financial statements, similar to</p> <p>18 what we went through earlier today in the prior</p> <p>19 testimony about what we saw with Highland</p> <p>20 and – and – and the – and HCMFA.</p> <p>21 Q. Is it fair to say that on Highland's</p> <p>22 balance sheet there were any number of assets</p> <p>23 that the value of which could be affected by</p> <p>24 subsequent events?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 371</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes. I mean, yes, that – there</p> <p>4 are. And that is – yes.</p> <p>5 Q. Okay. And is it typical accounting</p> <p>6 practice that until there is some certainty</p> <p>7 about those potential future events, that asset</p> <p>8 value listed on – on the books doesn't take</p> <p>9 into account those potential future events?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yeah, if those – yes. If – if</p> <p>13 those future events, you know, at the time of</p> <p>14 issuance are not known or knowable, like I</p> <p>15 discussed earlier with, like, market practice,</p> <p>16 asset dislocation, or, you know, I mean, things</p> <p>17 like that, you – I mean, it – it could affect</p> <p>18 its fair value –</p> <p>19 Q. Okay.</p> <p>20 A. – in the future.</p> <p>21 Q. And am I correct you wouldn't feel</p> <p>22 compelled to footnote in every possible change</p> <p>23 in – in an asset when those possibilities are</p> <p>24 still remote?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 372</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. The accounting standard is you have</p> <p>4 to estimate to the best – you know, to – to</p> <p>5 the best of your ability, the fair value of an</p> <p>6 asset as of the balance sheet date under –</p> <p>7 under GAAP.</p> <p>8 Q. Did – strike that.</p> <p>9 Okay. Give me a minute. I'm</p> <p>10 close – I'm close to done. Let me just go off</p> <p>11 and look at my notes for a second. So take two</p> <p>12 minutes.</p> <p>13 VIDEOGRAPHER: We're going off the</p> <p>14 record at 7:02 p.m.</p> <p>15 (Recess taken 7:02 p.m. to 7:03 p.m.)</p> <p>16 VIDEOGRAPHER: We are back on the</p> <p>17 record at 7:03 p.m.</p> <p>18 Q. Mr. Waterhouse, is it generally your</p> <p>19 understanding that people you work with now</p> <p>20 have been asking the debtor for full and</p> <p>21 unfettered access to their own former files?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, I am – I am generally aware.</p> <p>25 Q. Okay. And do you think you could</p>	<p>Page 373</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have been better prepared for this deposition</p> <p>3 if the debtor had complied with those requests?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I – I – I most certainly – yes.</p> <p>7 I mean, again, these are multiple years,</p> <p>8 multiple years ago, lots and lots of</p> <p>9 transactions.</p> <p>10 You know, we asked about NAV errors</p> <p>11 and, you know, things like that and these</p> <p>12 are – it would make this process a lot more –</p> <p>13 a lot easier and if we had – if we had access</p> <p>14 to that.</p> <p>15 Q. Okay. And has the debtor – is the</p> <p>16 debtor suing you right now?</p> <p>17 A. Yes.</p> <p>18 Q. And is the debtor trying to renege</p> <p>19 on deals that it had previously made with you?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. Sorry, I need to – it is my</p> <p>23 understanding that the litigation trust is</p> <p>24 suing me. And not being a lawyer, I don't</p> <p>25 know – is that the debtor?</p>



<p>Page 374</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Is that – I don't know the</p> <p>3 relationship. So, again, I'm not the lawyers.</p> <p>4 I've said many times. But my understanding is</p> <p>5 the litigation trust is suing me. I could be</p> <p>6 wrong there. I don't know.</p> <p>7 Q. Okay. I understand.</p> <p>8 Someone with some connection to the</p> <p>9 Highland debtor has brought a claim against</p> <p>10 you; is that fair?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is there also some motion</p> <p>15 practice in the bankruptcy where the debtor or</p> <p>16 someone associated with the debtor is</p> <p>17 attempting to undo something that was</p> <p>18 previously resolved with you?</p> <p>19 A. Yes.</p> <p>20 Q. And so in one action somebody is</p> <p>21 associated with the debtors trying to –</p> <p>22 threatening you with trying to take money from</p> <p>23 you, and then in the other – and trying to –</p> <p>24 and in the other they are threatening not to</p> <p>25 pay you things that had previously been agreed;</p>	<p>Page 375</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is that correct?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I want to be – yes, I – there</p> <p>6 is – I'm being sued, again, on – on something</p> <p>7 that was agreed to with Mr. Seery and myself.</p> <p>8 I don't – I don't – I don't own that claim.</p> <p>9 Q. Okay.</p> <p>10 A. To be transparent, I don't own that</p> <p>11 claim. So it is not my personal property.</p> <p>12 Q. Okay.</p> <p>13 A. And – and being the nonlawyer, I</p> <p>14 don't know how I can get sued for something</p> <p>15 that I don't owe or, like, I don't own</p> <p>16 anything. I'm not the lawyer. But, I mean, if</p> <p>17 that is – if I'm understanding the facts</p> <p>18 correctly.</p> <p>19 Q. Okay. And the lawsuit that was</p> <p>20 filed that names you, that was just filed</p> <p>21 this – this past week; is that right?</p> <p>22 MS. DANDENEAU: Ms. Deitsch-Perez, I</p> <p>23 do want to interrupt at this point because</p> <p>24 just as I told Mr. Morris, that this is a</p> <p>25 deposition about the noticed litigation.</p>
<p>Page 376</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I really don't want to go – go</p> <p>3 afield –</p> <p>4 MS. DEITSCH-PEREZ: Yeah.</p> <p>5 MS. DANDENEAU: – and open up a</p> <p>6 whole new line of inquiry about the lawsuit</p> <p>7 or the – the motion and the bankruptcy</p> <p>8 court. We will be here all night.</p> <p>9 MS. DEITSCH-PEREZ: And I</p> <p>10 understand.</p> <p>11 Q. My – my point is: Do you feel</p> <p>12 like – like there is some effort by these</p> <p>13 parties related to the debtor to intimidate</p> <p>14 you – not that you – I'm not saying you are</p> <p>15 or you aren't.</p> <p>16 But do you feel like there is some</p> <p>17 effort to intimidate you and maybe an effort to</p> <p>18 deter you from being as prepared as you might</p> <p>19 be in this deposition?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I was – I was surprised by the</p> <p>23 lawsuit, by me being named, because, again, I</p> <p>24 don't own the asset and things like that.</p> <p>25 Yeah, I just – I want to move forward with my</p>	<p>Page 377</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 life at Skyview.</p> <p>3 MS. DEITSCH-PEREZ: Thank you.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. If I may, I just have a few</p> <p>8 questions.</p> <p>9 Mr. Waterhouse, we saw a number of</p> <p>10 documents that Mr. Rukavina put up on the</p> <p>11 screen where Ms. Hendrix would send you a</p> <p>12 schedule of payments that were due on behalf of</p> <p>13 certain Highland affiliates.</p> <p>14 Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. And in each instance she asked for</p> <p>17 your approval to make the payments; is that</p> <p>18 right?</p> <p>19 A. Yes, she did.</p> <p>20 Q. And was that the – was that the</p> <p>21 practice in the second half of 2020 whereby</p> <p>22 Ms. Hendrix would prepare a list of payments</p> <p>23 that were due on behalf of Highland associates</p> <p>24 and ask for approval?</p> <p>25 A. Yes.</p>

<p>Page 378</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And I think you said that there was</p> <p>3 a – a –</p> <p>4 A. It was – I think I testified to</p> <p>5 this earlier when we talked about procedures</p> <p>6 and policy, you know, again, I want to be</p> <p>7 informed of – of – of – of – of any</p> <p>8 payments that are going out. I want to be made</p> <p>9 aware of these payments, and that was just a</p> <p>10 general policy, not just for 2020.</p> <p>11 Q. Okay. So it went beyond 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the corporate accounting</p> <p>16 group would prepare a calendar that would set</p> <p>17 forth all of the payments that were anticipated</p> <p>18 in the – in the three weeks ahead; is that</p> <p>19 right?</p> <p>20 A. I – like I testified earlier, we</p> <p>21 had a corporate calendar that was set up, you</p> <p>22 know, to – to provide reminders or, you know,</p> <p>23 of anything of any nature, whether it is</p> <p>24 payments or – or financial statements or, you</p> <p>25 know, whatever it is, you know, to meet</p>	<p>Page 379</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 deadlines.</p> <p>3 I don't know how, as I testified</p> <p>4 earlier, how much they were using that</p> <p>5 calendar.</p> <p>6 Q. Okay. But – but you did get notice</p> <p>7 and a request to approve the payments that were</p> <p>8 coming due on behalf of Highland's affiliates.</p> <p>9 Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I mean, generally, yes. I mean, you</p> <p>12 know, as we saw with these emails, generally, I</p> <p>13 mean, did that encompass everything, no.</p> <p>14 Q. Okay. Do you know why the</p> <p>15 payment – do you know why there was no payment</p> <p>16 made by NexPoint at the end of 2020?</p> <p>17 A. Yes. There was – there was – we</p> <p>18 talked about these agreements between the</p> <p>19 advisors and Highland, the shared services and</p> <p>20 the cost reimbursement agreement.</p> <p>21 And in late 2020, there were</p> <p>22 overpayments, large overpayments that had been</p> <p>23 made over the years on these agreements, and it</p> <p>24 was my understanding that the advisors were –</p> <p>25 were talking with – like Jim Seery and others</p>
<p>Page 380</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to offset any obligations that the advisors</p> <p>3 owed to Highland as offset to the overpayments</p> <p>4 on these agreements.</p> <p>5 Q. Okay. Did you participate in any of</p> <p>6 those conversations?</p> <p>7 A. I did not.</p> <p>8 Q. Okay. Do you know – do you recall</p> <p>9 that the – at the end of November, the debtor</p> <p>10 did notice to the advisors of their intent to</p> <p>11 terminate the shared services agreements?</p> <p>12 A. Like I testified earlier, there</p> <p>13 was – the agreements weren't identical, from</p> <p>14 what I recall, and there is one that had a</p> <p>15 longer notice period, which I think had a</p> <p>16 60-day notice period. I don't recall which one</p> <p>17 that was, so not all of them were – notice</p> <p>18 hadn't been given as of November 30th, for all</p> <p>19 of the agreements.</p> <p>20 Q. Upon the receipt of the – the</p> <p>21 termination notices that you recall, do you</p> <p>22 know if the advisors decided at that point not</p> <p>23 to make any further payments of any kind to</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, form.</p>	<p>Page 381</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The advisors – the advisors</p> <p>3 had stopped making payments prior to that</p> <p>4 notice.</p> <p>5 Q. Okay. And how do you know that the</p> <p>6 advisors stopped making – making payments</p> <p>7 prior to the notice?</p> <p>8 A. I had – I had a conversation</p> <p>9 with – with Jim Dondero.</p> <p>10 Q. And did Mr. Dondero tell you that</p> <p>11 the advisors would no longer make payments to</p> <p>12 Highland?</p> <p>13 MS. DEITSCH-PEREZ: Objection to the</p> <p>14 form.</p> <p>15 A. Yes, he – he – again, he said</p> <p>16 they – they – the advisors have overpaid on</p> <p>17 these agreements, to not make any future</p> <p>18 payments, and that there needs to be offsets,</p> <p>19 and they're working on getting offsets to these</p> <p>20 overpayment.</p> <p>21 Q. Do you know if anybody ever</p> <p>22 instructed Highland's employees to make the</p> <p>23 payment that was due by NexPoint at the end of</p> <p>24 the year?</p> <p>25 A. Did anyone instruct Highland's</p>

<p>Page 382</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 employees to make that payment?</p> <p>3 Q. Correct.</p> <p>4 A. Anyone – not that I'm aware.</p> <p>5 Q. Were any of Highland's employees</p> <p>6 authorized to make the payments on behalf of</p> <p>7 its affiliates – withdrawn.</p> <p>8 Was any of Highland's employees</p> <p>9 authorized to effectuate the payment on behalf</p> <p>10 of NexPoint that was due at the end of the year</p> <p>11 without getting approval from either you or</p> <p>12 Mr. Dondero?</p> <p>13 A. They had the – they had the ability</p> <p>14 to make the payment, but they didn't – you</p> <p>15 know, that – that payment needed to be</p> <p>16 approved.</p> <p>17 Q. Okay. And it needed to be approved</p> <p>18 by you or Mr. Dondero; is that right?</p> <p>19 A. I mean, I'm not going to make the</p> <p>20 unilateral decision.</p> <p>21 Q. Is that a decision that you</p> <p>22 understood had to be made by Mr. Dondero?</p> <p>23 A. Yes. Sitting back in December of</p> <p>24 2020, the – that – there was this off –</p> <p>25 offset negotiation that – that was happening,</p>	<p>Page 383</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so I mean, until those negotiations were</p> <p>3 resolved, you know, there wasn't any</p> <p>4 payments – there weren't any payments.</p> <p>5 Q. And – and there were no payments</p> <p>6 until the negotiations were resolved because</p> <p>7 that was the directive that you received from</p> <p>8 Mr. Dondero; correct?</p> <p>9 A. I don't think he said – I mean, I</p> <p>10 think – yeah, I mean – I'm trying to recall</p> <p>11 the conversation. It was – you know, there</p> <p>12 is – there is these negotiations. There's –</p> <p>13 there needs to be these offsets. They're</p> <p>14 talking with the debtor. So, you know, until</p> <p>15 this is resolved, right, I mean, depending on</p> <p>16 how, whatever that resolution was, were we to</p> <p>17 take any action.</p> <p>18 Q. Okay. How about with respect to</p> <p>19 HCMS, did HCMS have a term payment due at the</p> <p>20 end of the year?</p> <p>21 A. Again, I don't – I don't recall.</p> <p>22 Q. Okay. You discussed briefly two</p> <p>23 payments that were made in January of 2021, one</p> <p>24 on behalf of NexPoint, and one on behalf of</p> <p>25 HCMS. Do I have that right?</p>
<p>Page 384</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The two payments I recall were</p> <p>3 NexPoint and HCRE.</p> <p>4 Q. Okay. And those two payments –</p> <p>5 thank you for the correction. And those two</p> <p>6 payments were made because Mr. Dondero</p> <p>7 authorized those payments to be made; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And they hadn't been made before</p> <p>10 that because Mr. Dondero had not authorized</p> <p>11 them to be made?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Yes, because of these negotiations.</p> <p>15 Q. Okay. Just a couple of more</p> <p>16 questions.</p> <p>17 Did anybody, to the best of your</p> <p>18 knowledge, on behalf of HCMFA, ever tell the</p> <p>19 SEC that HCMLP was responsible for the mistakes</p> <p>20 that were made on the TerreStar valuation?</p> <p>21 A. Did anyone from Highland on HCMFA's</p> <p>22 behalf tell the SEC that Highland – that</p> <p>23 Highland was responsible for there – I just</p> <p>24 want to make sure –</p> <p>25 Q. It was a little bit different, so</p>	<p>Page 385</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 let me try again.</p> <p>3 A. These are very long questions, John.</p> <p>4 I'm not trying to be –</p> <p>5 Q. That is good. Do you know whether</p> <p>6 anybody – do you know whether anybody on</p> <p>7 behalf of HCMS – HCMFA ever told the SEC that</p> <p>8 Highland was the responsible party for the</p> <p>9 TerreStar valuation error?</p> <p>10 A. Not that I'm aware.</p> <p>11 Q. Okay. Did anybody on behalf of</p> <p>12 the – on behalf of HCMFA ever tell the retail</p> <p>13 board that Highland was responsible for the</p> <p>14 TerreStar valuation error?</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. Do you know if HCMFA made an</p> <p>17 insurance claim with respect to the damages</p> <p>18 that were incurred in relation to the TerreStar</p> <p>19 valuation error?</p> <p>20 A. Yes.</p> <p>21 Q. And do you know why they made that</p> <p>22 insurance claim?</p> <p>23 A. Because there was an error. I</p> <p>24 mean –</p> <p>25 Q. Was the insured's claim made – was</p>

<p>Page 386</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the insurance claim made under HCMFA's policy?</p> <p>3 A. Yes.</p> <p>4 Q. Did HCMFA at any time prior to the</p> <p>5 petition date – withdrawn.</p> <p>6 You were asked a couple of questions</p> <p>7 where – where you said that Mr. Dondero told</p> <p>8 you that he was ascribing zero value to the</p> <p>9 notes as part of a pot plan because he believed</p> <p>10 that the notes were part of executive</p> <p>11 compensation.</p> <p>12 Do I have that right?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you ever heard that</p> <p>17 before the time that Mr. Dondero told you that</p> <p>18 in the conversation about the pot plan?</p> <p>19 A. Had I heard that prior to my</p> <p>20 conversation with Mr. Dondero?</p> <p>21 Q. Yes.</p> <p>22 A. No, I had not heard that prior.</p> <p>23 Q. Okay. And that was in the context</p> <p>24 of his formulation of the settlement proposal;</p> <p>25 is that right?</p>	<p>Page 387</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, generally, yes. You know,</p> <p>3 we were asked to provide asset values, right,</p> <p>4 and he was having settlement discussions.</p> <p>5 Again, I don't know who those went to</p> <p>6 ultimately. I don't recall.</p> <p>7 MR. MORRIS: I have no further</p> <p>8 questions. Thank you very much for your</p> <p>9 patience. I apologize for the late hour.</p> <p>10 MS. DEITSCH-PEREZ: John, you stay</p> <p>11 on about your email when –</p> <p>12 MR. RUKAVINA: Hold on, I'm not</p> <p>13 done.</p> <p>14 MS. DEITSCH-PEREZ: Oh, okay. Davor</p> <p>15 still has questions. Sorry. I was going</p> <p>16 to say both John and Davor, could you stay</p> <p>17 on afterwards just to talk about the</p> <p>18 requests.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. RUKAVINA:</p> <p>21 Q. Mr. Waterhouse, you were just now</p> <p>22 testifying about a discussion you had with</p> <p>23 Mr. Dondero where he said something like no</p> <p>24 more payments.</p> <p>25 Do you remember that testimony?</p>
<p>Page 388</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And was that late November or</p> <p>4 early December of 2020?</p> <p>5 A. It was, I would say, first or second</p> <p>6 week of November.</p> <p>7 Q. Okay. Do you recall whether –</p> <p>8 whenever you had that discussion, whether</p> <p>9 Mr. Dondero had already been fired by the</p> <p>10 debtor?</p> <p>11 A. Yes, I – I believe he was not an</p> <p>12 employee of the debtor anymore at that time.</p> <p>13 Q. And when you were discussing this</p> <p>14 with Mr. Dondero and he said no more payments,</p> <p>15 you were discussing the two shared services</p> <p>16 agreements and employee reimbursement</p> <p>17 agreements we testified – you testified about</p> <p>18 before; is that correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. That is correct.</p> <p>22 Q. And had your office or you – and we</p> <p>23 will talk at a future deposition about the</p> <p>24 administrative claim.</p> <p>25 But had – by that time that you</p>	<p>Page 389</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 talked to Mr. Dondero, had your office or you</p> <p>3 done any estimate of what the alleged</p> <p>4 overpayments were?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes, we had – there was a – there</p> <p>8 was a detailed analysis that was put together</p> <p>9 by David Klos at the time.</p> <p>10 Q. And do you recall just generally</p> <p>11 what the total amount for both advisors of the</p> <p>12 overpayments was?</p> <p>13 A. It was in excess of \$10 million.</p> <p>14 Q. Was it in excess of \$14 million?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I – I remember it was an</p> <p>18 eight-figure number. I don't remember</p> <p>19 specifically.</p> <p>20 Q. Okay. And did you convey that</p> <p>21 number to Mr. Dondero when you had that</p> <p>22 conversation?</p> <p>23 A. Yes.</p> <p>24 Q. What was his reaction?</p> <p>25 A. I mean, he wasn't happy.</p>

<p>Page 390</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it fair to say he was upset?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Dondero ever expressly tell</p> <p>5 you to not have NexPoint make the required</p> <p>6 December 31, 2020, payment?</p> <p>7 A. Yes, I recall him saying don't make</p> <p>8 the payment because it was being negotiated, as</p> <p>9 I discussed with Mr. Morris, this offset</p> <p>10 concept. So there were obligations due by the</p> <p>11 advisors to Highland, they should be offset</p> <p>12 that – you know, those obligations should be</p> <p>13 offset by this – by this overpayment.</p> <p>14 Q. And when did he tell you that?</p> <p>15 A. I would say – I would say around –</p> <p>16 probably December – December-ish.</p> <p>17 Q. Early December, late December?</p> <p>18 A. I don't recall with as much</p> <p>19 specificity as – as – as – as stopping the</p> <p>20 shared services payments, because we had</p> <p>21 actually made one shared services payment in</p> <p>22 November. So that is why I need to remember</p> <p>23 that one more clearly. I don't remember where</p> <p>24 exactly in December that conversation occurred.</p> <p>25 Q. Did Mr. Dondero expressly use the</p>	<p>Page 391</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 word "NexPoint" when he was saying don't make</p> <p>3 these payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question, asked and answered.</p> <p>6 A. Yeah, we were – we were discussing</p> <p>7 advisor obligations. So it was – you know, it</p> <p>8 was just obligations from the advisors.</p> <p>9 And – and he specifically talked</p> <p>10 about the NexPoint payment as well.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 he expressly told you not to make that NexPoint</p> <p>13 December 31 payment?</p> <p>14 MR. MORRIS: Objection, asked and</p> <p>15 answered twice.</p> <p>16 A. Yes, he – he did, during that</p> <p>17 conversation.</p> <p>18 Q. And did you ever follow up with him</p> <p>19 after that about whether NexPoint should or</p> <p>20 shouldn't make that payment?</p> <p>21 A. I did not.</p> <p>22 Q. Did you ever, on or about</p> <p>23 December 31, 2020, remind him and say, hey,</p> <p>24 this payment is due, what shall I – what</p> <p>25 should I do?</p>
<p>Page 392</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I did not.</p> <p>3 Q. So sitting here today, you – you</p> <p>4 remember distinctly that Dondero in December of</p> <p>5 2020 expressly told you not to have NexPoint</p> <p>6 make that payment?</p> <p>7 MR. MORRIS: Objection, asked and</p> <p>8 answered three times.</p> <p>9 A. Yes.</p> <p>10 Q. Can you say categorically it wasn't</p> <p>11 just some general discussion where he told you</p> <p>12 not to make payments?</p> <p>13 MR. MORRIS: Objection, asked and</p> <p>14 answer four times.</p> <p>15 MR. HORN: Four times now. Go for</p> <p>16 five.</p> <p>17 A. Yes.</p> <p>18 Q. Did you tell Mr. Seery that?</p> <p>19 A. I don't believe I did. I don't</p> <p>20 recall.</p> <p>21 Q. And was this an in-person discussion</p> <p>22 or telephone or email? Do you remember?</p> <p>23 A. This was a phone – a phone</p> <p>24 conversation.</p> <p>25 Q. Okay. Would you have a record of –</p>	<p>Page 393</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 on your cell phone of when that conversation</p> <p>3 might have taken place?</p> <p>4 I'm sorry, strike that.</p> <p>5 Was that by cell phone?</p> <p>6 A. I believe – yes, because we – I</p> <p>7 was at home. I mean, I don't have a landline.</p> <p>8 All I have is my cell phone.</p> <p>9 Q. Do you know whether your cell phone</p> <p>10 still has records of conversations from</p> <p>11 December 2020 on it?</p> <p>12 A. My call log doesn't go back that</p> <p>13 far.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. RUKAVINA: I will pass the</p> <p>16 witness.</p> <p>17 MS. DEITSCH-PEREZ: Just a couple</p> <p>18 quick questions.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MS. DEITSCH-PEREZ:</p> <p>21 Q. With respect to HCRE and HCMS, am I</p> <p>22 correct there was – there was no direction not</p> <p>23 to pay those loan payments?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>



<p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I don't recall having</p> <p>3 conversations about, you know, those – those</p> <p>4 entities.</p> <p>5 Q. And, in fact, what was the tone that</p> <p>6 Mr. Dondero had when he talked to you about the</p> <p>7 fact that HCRE and HCMS payments hadn't been</p> <p>8 made when he found out that they hadn't been</p> <p>9 paid?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: Objection to form.</p> <p>12 Q. What was the tone he took with you?</p> <p>13 A. Oh, it was – it was – it was – it</p> <p>14 was very negative. I mean, I think he cursed</p> <p>15 at me and he doesn't usually curse.</p> <p>16 Q. Okay. And in your mind, is that</p> <p>17 consistent with the fact that he was surprised</p> <p>18 that those payments hadn't been made?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Thank you.</p> <p>23 MR. MORRIS: I have nothing further.</p> <p>24 Thank you so much, Mr. Waterhouse.</p> <p>25 MR. HORN: I have no questions.</p>	<p>Page 394</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Thank you, Mr. Waterhouse. We appreciate</p> <p>3 your time. I am logging off the discussion</p> <p>4 and I will talk to y'all tomorrow.</p> <p>5 MR. MORRIS: Super.</p> <p>6 VIDEOGRAPHER: If there are no</p> <p>7 further questions, this ends the</p> <p>8 deposition – excuse me. This ends the</p> <p>9 deposition, and we are going off the record</p> <p>10 at 7:30 p.m.</p> <p>11 (Deposition concluded at 7:30 p.m.)</p> <p>12</p> <p>13</p> <p>14 FRANK WATERHOUSE</p> <p>15</p> <p>16 Subscribed and sworn to before me</p> <p>17 this day of 2021.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 395</p>
<p>1 WATERHOUSE - 10-19-21</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, SUSAN S. KLINGER, a certified shorthand</p> <p>5 reporter within and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That FRANK WATERHOUSE, the witness whose</p> <p>8 deposition is hereinbefore set forth, was duly</p> <p>9 sworn by me and that such deposition is a true</p> <p>10 record of the testimony given by such witness.</p> <p>11 I further certify that I am not related to</p> <p>12 any of the parties to this action by blood or</p> <p>13 marriage; and that I am in no way interested in</p> <p>14 the outcome of this matter.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand this 19th of October, 2021.</p> <p>17</p> <p>18</p> <p>19 Susan S. Klinger, RMR-CRR, CSR</p> <p>20 Texas CSR# 6531</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 396</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 NAME OF CASE: In re: Highland Capital</p> <p>3 DATE OF DEPOSITION: October 19, 2021</p> <p>4 NAME OF WITNESS: Frank Waterhouse</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page__Line__Reason__</p> <p>10 From__to__</p> <p>11 Page__Line__Reason__</p> <p>12 From__to__</p> <p>13 Page__Line__Reason__</p> <p>14 From__to__</p> <p>15 Page__Line__Reason__</p> <p>16 From__to__</p> <p>17 Page__Line__Reason__</p> <p>18 From__to__</p> <p>19 Page__Line__Reason__</p> <p>20 From__to__</p> <p>21 Page__Line__Reason__</p> <p>22 From__to__</p> <p>23 Page__Line__Reason__</p> <p>24 From__to__</p> <p>25</p> <p>Page 397</p>

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## **EXHIBIT 106**



2515 McKinney Avenue, 11th Floor  
Dallas, Texas 75201  
972.934.4700  
www.NexBank.com



Date 12/29/17 Page 1  
Primary Account [REDACTED]  
Enclosures

Highland Capital Management LP  
300 Crescent Court Suite 700  
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at [www.NexBank.com/files/privacynotice.pdf](http://www.NexBank.com/files/privacynotice.pdf). If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number

Statement Dates 12/01/17 thru 12/31/17

[REDACTED]

#### Deposits and Additions

Date	Description	Amount
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
12/08	INCOMING WIRE JAMES D DONDERO	677,500.75

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION

Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.



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Dallas, Texas 75201  
972.934.4700  
[www.NexBank.com](http://www.NexBank.com)




Date 12/29/17  
Primary Account  
Enclosures

Page 2

### Analysis Checking w/ Interest

(Continued)



## Checks and Withdrawals

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION

Payments received at the address indicated on this statement by 3:00 pm, Central Standard Time each banking day will be credited as of that date.



2515 McKinney Avenue, 11th Floor  
Dallas, Texas 75201  
972.934.4700  
www.NexBank.com



Date 12/29/17  
Primary Account  
Enclosures

Page 3

Analysis Checking w/ Interest

(Continued)

[REDACTED]

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION

Payments received at the address indicated on this statement by 3:00 pm, Central Standard Time each banking day will be credited as of that date.

HIGHLY CONFIDENTIAL

D-CNL003544  
Appx. 02182



[illegible]

## **EXHIBIT 107**